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The United Nations Conference on Environment and Development: An Opportunity to Forge a New Unity in the Work of the World Bank Among Human Rights, the Environment, and Sustainable Development

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I. INTRODUCTION

In 1992, the leaders of 180 nations gathered for the biggest summit meeting in history at the United Nations Conference on Environment and Development (UNCED) to negotiate a plan for what was termed sustainable development in the twenty-first century. They came together to address the need to improve standards of living while assuring that human consumption of resources do not exceed the capacity of the environment.¹ Poorly planned development, environmental accidents, involuntary resettlements, land degradation, and natural disasters worsened by increasingly vulnerable environments threaten greater numbers of people each year. Development projects alone have displaced 1.5 million people, creating the further problem of environmental refugees in squatter settlements, slums, and shantytowns, and another 1.5 million are expected to be displaced by projects now in planning.² Continued development based on old

* B.A. Hamilton College, 1989. The author wishes to thank Wiltrud Harms and George Gundry for assistance in research, Michelle Schwartz and Naomi Roht-Arriaza for comments on early drafts, and Elizabeth A. Morrow for everything.

1. Ronnie Lipschutz, *Wasn't the Future Wonderful? Resources, Environment, and the Emerging Myth of Sustainable Development*, 2 COLO. J. INT'L L. & POL'Y 35, 38 (1991).

2. UNITED NATIONS, PREPARATORY COMMITTEE FOR THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, COMBATTING POVERTY, CHANGING CONSUMPTION PATTERNS, AND DEMOGRAPHIC DYNAMICS AND SUSTAINABILITY, (SECTION I, CHAPTERS 2, 3, AND 4 OF AGENDA 21), REPORT OF THE SECRETARY GENERAL OF THE CONFERENCE, n.14, U.N. Doc. A/CONF.151/PC/100/Add.2 (1992), available in

models threatens not only the environment, but the sovereignty and human rights of millions of people. As the international finance community focuses on achieving sustainable development, greater environmental protection through environmental assessment, provision of information and popular participation should be required as a matter of human rights law.

On an international level, human rights law standards can be used to discover and prevent environmental degradation by protecting individuals from the adverse effects of government activities.³ The need for human rights and environmental standards and procedures is especially acute in preventing the human injury that flows from internationally funded development projects. If the organizational and legal structures of international governance are not sufficient to rein in unsustainable development, domestic legal channels offer another means to effect sustainable policies for the next century. As major development banks are the actors through which development policy transpires, this Note will focus on the problems in the current development process, examine proposals for the future, study the growing influence of human and environmental rights, and consider the institutional implications of this influence.

II. THE PROBLEM OF ENVIRONMENT AND DEVELOPMENT BEFORE THE INTERNATIONAL COMMUNITY

Developmental, environmental, and human rights abuses often combine in ways that lay waste to rural communities and indigenous populations. Examples of short-sighted development abound. About ten percent of the Earth's potentially fertile land has already been turned into desert or waste due to unsustainable human domination of the land.⁴ This exploitation of the Earth has left 1.5 billion people without access to clean water, the same number without fuelwood for cooking and heating, and 2.2 billion without access to sanitation facilities.⁵ Forestry projects or mass clearing of land for export agriculture

ECONET, Conference: en.unced.document, Topic No. 241 [hereinafter POVERTY REPORT]; Letter from Sen. Patrick Leahy, Senate Foreign Operations Subcommittee, to Nicholas F. Brady, Secretary of Treasury (June 25, 1991) (available from the Senate Committee on Appropriations) [hereinafter Senate Letter].

3. Melissa Thorne, *Establishing Environment as a Human Right*, 19 DENV. J. INT'L L. & POL'Y 301 (1991).

4. Jan Pronk & Mahbubul Haq, Hague Report, at 3-4 (Mar. 1992).

5. *Id.* at 4.

often destroys the balanced relationship that people have with the land on which they live.

The Penan people of Malaysia exemplify the grave human rights offenses that sometimes occur in the effort to develop national resources.⁶ This indigenous people has been forced to migrate to shantytowns while their Sarawak rainforest home in northwest Borneo is cleared by multinational logging companies and government agencies.⁷ As of 1985, thirty percent of the Sarawak forest was logged and sixty percent was given out in timber concessions.⁸ Not only will the nomadic Penan lose their home, but their livelihood, health, means of obtaining food and clean water, and some aspects of their culture are at risk.⁹ In a visit to then-U.S. Senator Al Gore, a Penan delegation member said, "We are not being killed by weapons, but when our lands are taken, it is the same as killing us."¹⁰

The effects of deforestation are no less stark when done by an impoverished populace. In India, due to deforestation the Himalayan slopes are no longer able to hold rainwater, so floods are increasing throughout the Himalayan watershed.¹¹ Soil erosion from the deforested land clogs the river channels and worsens runoff capacity. The increase in environmental stress and poorly planned development in vulnerable areas has made the annual flood losses fourteen times greater today than in 1950.¹² While the dangers posed by the environmental stresses of poverty and overpopulation are great, attempts to raise standards of living may also have disastrous effects.

In the past, large projects such as hydroelectric dams have forced mass involuntary resettlements of local peoples, creating shantytowns

6. See generally UNITED NATIONS, SUB-COMMISSION ON THE PREVENTION OF DISCRIMINATION AND THE PROTECTION OF MINORITIES, HRA/NHI SUBMITTAL TO THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND THE PROTECTION OF MINORITIES, DESTRUCTION OF THE RAIN FOREST IN SARAWAK, MALAYSIA, AND THE PENAN, AN INDIGENOUS PEOPLE IN PERIL, U.N. Doc. E/CN.4/Sub.2/1990/NGO/22 [hereinafter HRA/NHI], cited in Michelle Schwartz, *Legal and Institutional Aspects of the Relationship between Human Rights and the Environment*, NAT. HERITAGE INST., Aug. 1991, at 3 (on file with author).

7. *Id.* See also AL GORE, *EARTH IN THE BALANCE* 284 (1992).

8. UNITED NATIONS, SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND THE PROTECTION OF MINORITIES, WRITTEN STATEMENT SUBMITTED BY THE FOUR DIRECTIONS COUNSEL, A NON-GOVERNMENTAL ORGANIZATION IN CONSULTATIVE STATUS (CATEGORY II), at 2, U.N. Doc. E/CN.4/Sub.2/1991/NGO/45 (1991).

9. *Id.* at 2-3.

10. GORE, *supra* note 7, at 285.

11. ESSAM EL-HINNAWI, *ENVIRONMENTAL REFUGEES* 14 (1985).

12. *Id.*

and a multitude of health problems.¹³ For instance, construction of the Volta Dam in Ghana inundated 700 towns and the homes of 78,000 people, who were resettled to fifty-two locations.¹⁴ The resettlement was not well-planned, and the complex relationships between the tribes and their lands were not sufficiently respected. When proposed land clearing schemes did not create sustainable opportunities, the continuity of tribal farming was disrupted.¹⁵ These people lost their land, livelihood, and heritage. They were condemned to shantytown poverty. The doctrines of eminent domain, on the national level, or expropriation, on the international level, only require compensation when the government takes private property for public purposes. Existing legal doctrine does little to reimburse occupants who lose their way of life and sustenance, and even less for those who do not hold legal title to their lands.¹⁶ Further aid was required to keep the Ghanan people from starving in the midst of a project created for the purpose of furthering economic development.¹⁷ The history of involuntary resettlements due to water development projects is replete with inadequate planning, insufficient environmental assessment budgets, incomplete execution, and problems with the transfer of technology.¹⁸ Resettlements often result in a loss of arable land, the destruction of traditional social structures, and new diseases.¹⁹

Some argue that indigenous groups targeted for the "benefits" of economic development and market conversion are practitioners of sustainable agriculture in these less developed areas.²⁰ Indigenous peoples themselves have testified to the damage done to local sustainable methods of sustenance by projects meant to "improve" living standards. At the World Commission on Environment and Development, Jaime da Silva Araujo said,

13. See Zygmunt J.B. Plater, *Damming the Third World: Multilateral Development Banks, Environmental Diseconomies, and International Reform Pressures on the Lending Process*, 17 DENV. J. INT'L L. & POL'Y 121, 127-32 (1988).

14. EL-HINNAWI, *supra* note 11, at 33-34.

15. *Id.*; Paul R. Muldoon, *The International Law of Ecodevelopment: Emerging Norms for Development Assistance Agencies*, 22 TEX. INT'L L.J. 1, 3 (1988).

16. Ibrahim F.I. Shihata, *The World Bank & Human Rights, An Analysis of the Legal Issues and the Record of Achievements*, 17 DENV. J. INT'L L. & POL'Y 39, 63 (1988) [hereinafter Shihata (88)].

17. EL-HINNAWI, *supra* note 11, at 14.

18. *Id.* at 34.

19. *Id.*

20. Bruce M. Rich, *The Multilateral Development Banks, Environmental Policy, and the United States*, 12 ECOLOGY L. Q. 681, 692-93 (1985).

We live . . . [in the Amazon] Forest they want to destroy. . . . In my area, we have about 14-15 native products that we extract from the forest, besides all the other activities we have. So I think this must be preserved. Because it is not only with cattle, not only with pasture lands, and not only with highways that we will be able to develop the Amazon.²¹

Meaningful development can only be accomplished through broader consideration of potential options and consequences, especially from the perspective of those affected. Otherwise, future projects will fail. The long list of efforts at development which have failed led the Global Consultation on the Right to Development as a Human Right to the following conclusion: "Development strategies which have been oriented merely towards economic growth and financial considerations have failed to a large extent to achieve social justice; human rights have been infringed, directly and through the depersonalization of social relations, the breakdown of families and communities, and of social and economic life."²²

Because the earth's resources have often been cultivated by peasant households or family farmers, with most of the work done by women, empowerment of these groups to take care of the land, by encouraging public participation and delegating power and responsibility, promotes a more sustainable relationship with the land.²³ Development without consideration of the impact on environmental and human rights is not development at all. All three goals - economic development, environmental maintenance, and greater protection of human rights - must be addressed together as they are different but interrelated aspects of human need.²⁴ If the problem of sustainable development is not addressed coherently, no progress will be made to reconcile the interests of the environment, human rights and develop-

21. Jaime da Silva Araujo, National Council of Rubber Trappers, Statement at World Commission on Environment and Development (WCED) Public Hearing, Sao Paulo, Oct. 28-29, 1985, *reprinted in* WORLD CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, *Our Common Future* 58 (1987), U.N. Doc. UNEP/GC.14/13 (1987) [hereinafter *OUR COMMON FUTURE*].

22. UNITED NATIONS, COMMISSION ON HUMAN RIGHTS, GLOBAL CONSULTATION ON THE RIGHT TO DEVELOPMENT AS A HUMAN RIGHT, REPORT PREPARED BY THE SECRETARY-GENERAL, at 42, U.N. Doc. E/CN.4/9/Rev.1 (1990) [hereinafter *Global Consultation on the Right to Development*].

23. *See generally*, POVERTY REPORT, *supra* note 2, ¶¶ 3, 7, 91-97.

24. *Environment, Economic Development, and Human Rights: A Triangular Relationship?*, 82 AM. SOC. INT'L L. PROC. 40 (1988).

ment.²⁵ The ends sought through sustainable development have roots in existing human rights standards, which may be achieved by extending environmental rights, and should be implemented more affirmatively in the future.

III. THE CHALLENGE FACING UNCED

UNCED provided a forum for the elaboration of rights-based measures in the context of increased national and international efforts to promote sustainable and environmental asset management.²⁶ After many efforts, the U.N. organized an international body to reconcile disagreements over the intractable conflicts between the northern, more developed nations that produce the most pollution and the southern, less developed nations which receive the greatest responsibility for conservation and prevention. UNCED was called to examine the state of the environment; to articulate international environmental law, general rights, and strategies for integrated cooperation towards environmentally sound development; and to devise means for the provision of financial resources to accomplish these goals.²⁷ One principal goal has been to transfer the technological capacity to help poor countries develop with the least environmental impact possible, recognizing that human rights standards are essential to the dialogue.²⁸ To mitigate the environmental impact of future development, intergovernmental organizations must respect the principles of positive human rights law, norms of customary law, and the relationships established in the UNCED documents: the Rio Declaration, a charter of general principles, and Agenda 21-UNCED's 800-page action plan for governments during the next century.²⁹

25. See generally Nathaniel C. Nash, *Chileans Pay Dearly For Economic Growth*, N.Y. TIMES, Nov. 10, 1991, at E6.

26. *United Nations Conference on Environment and Development*, G.A. Res. 44/228, 44 U.N. GAOR Supp. No. 49, at 152, U.N. Doc. A/44/49 (1989).

27. *Id.* at 153-54.

28. See PREPARATORY COMMITTEE FOR THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, REPORT OF THE SECRETARY-GENERAL OF THE CONFERENCE, PROGRESS REPORT ON INSTITUTIONS, at 3, U.N. Doc A/CONF.151/PC/36 (Jan. 31, 1991) [hereinafter PROGRESS REPORT ON INSTITUTIONS]; Lipschutz, *supra* note 1, at 41.

29. See United Nations, *United Nations Conference on Environment and Development*, Report of the United Nations Conference on Environment and Development, Annex I, Rio Declaration on Environment and Development, Principle 1, U.N. Doc. A/CONF.151/26 (Vol. I) (1992) [hereinafter RIO DECLARATION] available in ECONET, Conference en.unced.document, Topic 453; UNITED NATIONS, UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, REPORT OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, AGENDA 21, VOL. I-IV, U.N. Doc. A/151/26 available in ECONET, Conference en.unced.document. See *Senate Ratifies Climate Change*

Past development planning has not adequately recognized the distinction between economic growth and human development. Increasingly, investment and economic policies that base the measure of economic growth entirely on industrial output are seen as unrealistic and dangerous.³⁰ Both industrial growth and environmental planning involve the future use of land, but gross national product (GNP) planning does not take into account environmental costs, or the long term consequences of resource exhaustion and environmental degradation.³¹ A development process insulated from ecological concerns ultimately undermines the quality of life of a country's population and its future development capacity.³² The non-sustainable nature of industrial economic growth is what makes the notion of sustainable development so urgent.³³

Sustainable development, therefore, has been defined as development without growth.³⁴ In other words, to be truly sustainable, future development of human potential must be accomplished in a way that reduces human impact on the environment, rather than allowing industrial externalities, or harmful byproducts, to choke communities.³⁵ To raise living standards economic planners should now focus on enhancing the value of what people contribute to the world economy rather than increasing the rate of production and consumption. Action must be taken to ensure that less industrialized nations do not repeat the wasteful development patterns of more industrialized nations. Less industrialized countries are increasing not only in their use of resources, but also their contribution to the acceleration of global consumption.³⁶ World leaders called UNCED to coordinate transfers of environmentally sound technology, build the capacities of less de-

Treaty, Cites Monetary Concern, ENV'T WK., Oct. 15, 1992, available in LEXIS, Nexis library, Currnt File.

30. See Statement by Herman Daly, World Bank Economist, reprinted in *Citings*, WORLD WATCH, Jan.-Feb. 1992, at 8 [hereinafter Daly]; Muldoon, *supra* note 15, at 18-19. See also GORE, *supra* note, 7, at 183-91.

31. See Bondi D. Ogalla, *Role of Environmental Law in Development*, 29 J. INDIAN L. INST. 187, 189 (1987); GORE, *supra* note 7, at 337-38.

32. Ogalla, *supra* note 31, at 200.

33. Daly, *supra* note 30, at 8.

34. Lipschutz, *supra* note 1, at 49-51.

35. The term "externalities" refers to incidental injuries, unintentional side effects, or harmful spillovers imposed on third parties on the global commons and omitted from the economic accounting of production. See generally BAUMOL & OATES, *ECONOMICS, ENVIRONMENTAL POLICY AND THE QUALITY OF LIFE* 71-79 (1979), cited in PERCIVAL, *ENVIRONMENTAL REGULATION* 37-44 (1992); Hardin, *The Tragedy of the Commons*, 168 SCIENCE 1243 (1968).

36. POVERTY REPORT, *supra* note 2, n.8.

veloped nations for the sustainable development of their peoples, and protect the environment for future generations.³⁷

UNCED was convened in recognition that the cost of inaction could well exceed the full costs of implementing a cohesive plan for global sustainable development and conversion to environmental economics.³⁸ UNCED's demand that more developed nations grant 0.7 percent of GNP to official development assistance (ODA)³⁹ rather than the current 0.35 percent seems only equitable given the \$50-billion-a-year net resource transfer from the poor to the "beneficiary" or "donor" nations.⁴⁰ As a number of former world leaders put it, the 0.7 percent ODA/GNP target is not foreign aid in traditional terms, but an essential investment in global environmental security.⁴¹ The U.S. refused to commit to a specific target,⁴² which stalled the negotiations on other portions of the convention. However, the thrust of UNCED need not depend entirely on the provision of additional resources to fund new developments now regarded as "sustainable." Rather, the spirit of UNCED which should pervade global finance holds that the time has come for development to be limited by environmental concerns and respect for the human rights of those affected by development projects.

If there is to be progress in slowing global environmental degradation, it must involve large amounts of aid. Global environmental issues such as climate control require less industrialized countries to make legally binding commitments to help solve problems which are

37. GORE, *supra* note 7, at 297.

38. UNITED NATIONS, UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, AGENDA 21, CHAPTER 33, FINANCIAL RESOURCES AND MECHANISMS, ¶ 33.4, U.N. Doc. 151/26 (Vol. III) (1992), available in ECONET, Conference en.unced.docum [hereinafter AGENDA 21, FINANCIAL RESOURCES].

39. *Id.*, ¶ 33.13.

40. Pronk & Haq, *supra* note 4, at 3. U.S. expenditures for the Marshall Plan, an apt comparison, were at 2% of GNP from 1948 to 1951. GORE, *supra* note 7, at 304. The Organization for Economic Cooperation and Development defines ODA as grants or loans for promotion of economic development or welfare at concessional financial terms. ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, DEVELOPMENT COOPERATION: EFFORTS AND POLICIES OF THE MEMBERS OF THE DEVELOPMENT ASSISTANCE COMMITTEE, 1983 REVIEW 176 (1983), cited in John Horberry, *The Accountability of Development Assistance Agencies: The Case of Environmental Policy* 12 *ECOLOGY L. Q.* 817, 819-20 (1985).

41. Eminent Person's Meeting on Financing Global Environment and Development, at 2 (Tokyo, Apr. 17, 1992) (on file with author) [hereinafter Tokyo Declaration].

42. The U.S., which disassociated itself from the target, is now at 0.2% of GNP. *Environment: South Accuses North of Failing to Honor Pledge*, Inter Press Service, Nov. 2, 1992, available in LEXIS, Nexis Library, IPS File.

not of their making and beyond their ability to control.⁴³ The overall requirement for concessional international finance for the implementation of the Agenda 21 plan has been estimated at 125 billion U.S. dollars for the period from 1993 to the year 2000.⁴⁴ While this 'cost' might seem high at a time when many countries are in recession, this figure does not consider the cost of inaction. In comparison, the U.S. alone spends 115 billion U.S. dollars, or two percent of its annual GNP on control of its own pollution each year.⁴⁵ During UNCED deliberations, Brazil and Argentina stated that old development models left developing nations unable to afford environmental protection.⁴⁶ In the aggregate, there has been an enormous net financial transfer of resources from less developed to more developed nations due to foreign debt, rising interest rates, deteriorating terms of trade, and withdrawal of private creditors.⁴⁷ Therefore, fairness requires measures to stop the flight of capital, both in resources and in debt

43. UNITED NATIONS, United Nations Environment Programme Governing Counsel, ENVIRONMENT AND ECONOMICS, INTRODUCTORY REPORT OF THE EXECUTIVE DIRECTOR, ¶ 18, U.N. Doc. UNEP/GC.16/4/Add.4 (1991) [hereinafter ENVIRONMENT AND ECONOMICS].

44. UNITED NATIONS, PREPARATORY COMMITTEE FOR THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, FINANCIAL RESOURCES AND MECHANISMS, REPORT OF THE SECRETARY-GENERAL OF THE CONFERENCE, ¶ 6, U.N. Doc. A/CONF.151/PC/101 (1992), available in ECONET, Conference en.unced.document, Topic No. 262 [hereinafter FINANCIAL RESOURCES AND MECHANISMS]. The Clinton Administration has resurrected hopes that the U.S. will take the lead in advocating "earth increments" or additional aid payments to make the transition to sustainable development. Aspen Institute, *Aspen Institute Urges Clinton Administration and Congress to Face Up to Hard Economic Policy Choices*, PR NEWswire, Jan. 25, 1993, available in LEXIS, Nexis Library, Curtnt File. Only about 30% of the money designated as development aid leaves the U.S. UNITED NATIONS, SUB-COMMISSION ON THE PREVENTION OF DISCRIMINATION AND THE PROTECTION OF MINORITIES, THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS, Final Report by Daniello Turk, the Special Rapporteur, at 22, U.N. Doc. E/CN.4/Sub.2/16 (1992) [hereinafter Turk (92)].

45. FINANCIAL RESOURCES AND MECHANISMS, *supra* note 44, ¶ 22. Comparative costs of air pollution reduction in less developed nations are minimal. A GEF project to reduce carbon dioxide emissions in Nigeria will have a projected cost of \$0.2 per ton of carbon dioxide, compared to \$10-30 per ton in more developed countries. *GEF Completes Initial Portfolio of Projects*, ENERGY, ECON. AND CLIMATE CHANGE, November 1992, available in LEXIS, Nexis Library, Curtnt File.

46. UNITED NATIONS, PREPARATORY COMMITTEE FOR THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, FINANCIAL RESOURCES, POSITION PAPER SUBMITTED BY ARGENTINA AND BRAZIL, ¶¶ 1, 2, 4, U.N. Doc. A/CONF.151/PC/93 (1991) [hereinafter ARGENTINA AND BRAZIL FINANCIAL RESOURCES].

47. UNITED NATIONS, PREPARATORY COMMITTEE FOR THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, INTERNATIONAL ECONOMY AND ENVIRONMENT AND DEVELOPMENT, REPORT OF THE SECRETARY-GENERAL OF THE CONFERENCE, § V, U.N. Doc. No. A/CONF.151/PC/47 (1991).

payments, from less industrialized nations and the provision of technologies to meet the environmental challenge of achieving sustainable development, while providing fair compensation for those technologies.⁴⁸

Much of the need for finance comes from the burdens of funding the transfer of environmentally sound technology; both in direct finance and licensing Agenda 21 carefully protects market incentives for transfers of technology without prejudice to intellectual property rights.⁴⁹ Technology transfer includes: provision for research and development; access to technology; building the human resources for safe use of such technology and the capacity for environmental impact and risk assessments.⁵⁰ The means contemplated for technology transfer include the creation of information clearinghouses; exemptions in environmental conventions for certain countries until restrictive patents expire; the purchase and transfer of patents on commercial or non-commercial terms; changes in subsidies, tax policies, or regulations; and long-term, collaborative efforts by multinationals and joint ventures.⁵¹ While the transfer of new technology is necessary to assure that less industrialized nations do not pollute to the same extent that the more industrialized nations have in their process of development, financial mechanisms for linking the costs to polluters have not materialized, adding to the burden of financing sustainable development.⁵²

To its credit, the effort at UNCED should change the implementation of many human rights standards through development agreements and structures.⁵³ The principles embodied by UNCED put pressure on the World Bank, the International Monetary Fund (IMF) and other international and regional development banks to increase

48. ENVIRONMENT AND ECONOMICS, *supra* note 43, ¶¶ 18-19.

49. UNITED NATIONS, UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, AGENDA 21, CHAPTER 34, TRANSFER OF ENVIRONMENTALLY SOUND TECHNOLOGY COOPERATION AND CAPACITY BUILDING, at ¶¶ 34.11, 34.18, U.N. Doc. A/CONF.151/26 (Vol. III)(1992) available in ECONET, Conference en.unced.document, Topic No. 488 [hereinafter AGENDA 21, TECHNOLOGY TRANSFER].

50. UNITED NATIONS, PREPARATORY COMMITTEE FOR THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, TRANSFER OF ENVIRONMENTALLY SOUND TECHNOLOGY, CHINA AND GHANA: DRAFT DECISION, U.N. Doc. A/CONF.151/PC/L.46 (1991), available in ECONET, Conference en.unced.document, Topic No. 189.

51. AGENDA 21, TECHNOLOGY TRANSFER, *supra* note 49, ¶ 34.18.

52. UNCED encouraged the exploration of innovative sources of financing including debt relief, debt swaps, economic incentives, tradeable permits, private fundraising, and the reallocation of military expenditures. AGENDA 21, FINANCIAL RESOURCES, *supra* note 38, ¶ 33.16.

53. PROGRESS REPORT ON INSTITUTIONS, *supra* note 28, at 5.

their sensitivity to environmental issues.⁵⁴ As human rights standards, environmental protection, and sustainable development are interdependent means and ends in themselves, international development agencies should take all three into consideration when evaluating prospective projects.

Another aspect of international law which should guide development is the evolving concept of a right to the environment. U.N. Special Rapporteur Fatma Zohra Ksentini defined this right in terms of a series of obligations designed to protect the environment and to safeguard the fundamental rights of human beings and the interests of future generations.⁵⁵ UNCED's global reform of environmental and developmental policy provides an opportunity to apply these norms in ensuring greater effectiveness, reliability, and sustainability in the projects undertaken by international development banks.

Governments generally resist constraints on resource exploitation as limiting their growth. They often focus exclusively on developing industry and promoting growth, thereby providing for the sustenance of their people over protection of the environment. Less industrialized nations respond with indignation when more industrialized nations dictate the rate and degree of their development.⁵⁶ These less industrialized nations point out that restrictive environmental demands are often made by countries which have depleted their own resources and therefore must maintain the imbalance in consumption and the flow of raw materials to the more industrialized nations.⁵⁷ They assert that it is unfair for more industrialized nations to impose environmental restrictions on the development of less industrialized nations without sharing in the costs of protecting what is left of the global commons.⁵⁸ In requesting additional monies to help bypass the

54. James C.N. Paul, *International Development Agencies, Human Rights & Humane Development Projects*, 17 DENV. J. INT'L L. & POL'Y 67, 75 (1988).

55. UNITED NATIONS, SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES, HUMAN RIGHTS AND THE ENVIRONMENT, PRELIMINARY REPORT PREPARED BY MRS. FATMA ZOHRA KSENTINI, SPECIAL RAPPORTEUR, ¶ 97, U.N. Doc. E/CN.4/Sub.2/8 (1991) [hereinafter KSENTINI (91)].

56. See, e.g., ARGENTINA AND BRAZIL, FINANCIAL RESOURCES, *supra* note 46, ¶¶ 2, 15; UNITED NATIONS, UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, LETTER DATED 1 JULY 1991 FROM THE CHARGE D'AFFAIRES A.I. OF THE PERMANENT MISSION OF CHINA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL, ANNEX, BEIJING MINISTERIAL DECLARATIONS ON ENVIRONMENT AND DEVELOPMENT, U.N. Doc. A/46/293, ¶ 6 (1991) [hereinafter BEIJING MINISTERIAL DECLARATIONS].

57. See, e.g., ARGENTINA AND BRAZIL, FINANCIAL RESOURCES, *supra* note 46, ¶¶ 1-2.

58. KSENTINI (91), *supra* note 55, ¶ 42.

wasteful process that more developed nations have taken, less industrialized countries argue that existing aid should not be conditioned on environmental activities.⁵⁹ However, the provision for funding sustainable development should be based on such conditions because industrial advancements are only meaningful when sustainable.⁶⁰

The dialogue over the capital needed to protect the environment causes parties to ignore the plight and perspective of women, indigenous peoples, and those suffering from extreme poverty, some of whom offer more sustainable uses of land.⁶¹ In the end, environmental degradation and political strife create comparable numbers of refugees, but environmental refugees never receive the same attention.⁶² By focusing on those whose lives are affected by development projects, human rights law appeals to all states' interests in public welfare.⁶³ While a state's right to sovereignty allows people to dispose of natural wealth freely, without prejudice to any obligation arising out of international economic cooperation, human rights law dictates that people may not be deprived of their own means of subsistence.⁶⁴ This right inheres to individuals, not to the state. The human rights perspective brings out the connections between political repression, resource management, poverty, and environmental degradation.⁶⁵ Thus, environmental prerogatives issue from the grassroots concerns of injured individuals, avoiding the more basic sovereignty concerns. Existing human rights law offers one venue to encourage cooperative action on behalf of individual parties on a national and international level to protect the environment.

There are numerous proposals to interrelate between human rights law and protection of the environment. The Sub-Commission on the Prevention of Discrimination and Protection of Minorities has appointed a Special Rapporteur on the subject.⁶⁶ One proposal would allow existing human rights, such as the right to life in Article 3 of the Declaration of the Universal Declaration of Human Rights, to be used

59. ARGENTINA AND BRAZIL, FINANCIAL RESOURCES, *supra* note 46, ¶¶ 1, 3.

60. Ibrahim F.I. Shihata, *The World Bank and the Environment: A Legal Perspective* 16 MD. J. INT'L L. & TRADE 1, 19 (1992) [hereinafter Shihata (92)].

61. William A. Shutkin, Note, *International Human Rights Law and the Earth: The Protection of Indigenous Peoples and the Environment*, 31 VA. J. INT'L L. 479 (1991).

62. Jodi L. Jacobson, *Abandoning Homelands*, in STATE OF THE WORLD 59, 60 (Worldwatch Inst. ed., 1989).

63. Thorne, *supra* note 3.

64. UNITED NATIONS, UNITED NATIONS WORK FOR HUMAN RIGHTS 18, U.N. Sales No. 65.I (1965).

65. *Environment, Economic Development, and Human Rights*, *supra* note 24, at 41.

66. KSENTINI (91), *supra* note 55, ¶ 1.

to protect those who suffer serious risk to, or loss of life due to environmental degradation.⁶⁷ Another would establish an international right to the environment.⁶⁸ As a right of solidarity, the right to the environment would involve duties and responsibilities at the national and international level.⁶⁹ All of these standards, discussed below, could be applied at many stages in the development cycle to assure an adequate standard of living for the poorest people in a country, as well as protecting the environment from imprudent development.

IV. THE WORLD BANK AND PROBLEMS ARISING FROM DEVELOPMENT PROJECTS

A. Introduction and History

World Bank development projects often create violations of human rights and harm to the environment. In 1944, the World Bank was set up by the U.N. Monetary and Financial Conference to reconstruct and develop war-torn Europe and Asia, stimulate the growth of international trade, and facilitate the international circulation of capital.⁷⁰ The term "World Bank" refers generally to the International Bank for Reconstruction and Development, the International Development Association, and two affiliates, the International Finance Corporation and the Multilateral Investment Guarantee Agency.⁷¹ The present purposes of the World Bank are to promote trade, investment, and development by channeling financial resources in order to raise productivity, standards of living and conditions of labor in member countries.⁷² The International Bank for Reconstruction and Development, which does the bulk of actual lending, is owned by the governments of 155 countries, and finances itself through various means, boasting a triple-A rating on world capital markets.⁷³ While World

67. *Universal Declaration of Human Rights*, G.A. Res. 217 A(111), Dec. 10, 1948, art. 3, U.N. Doc. A/810, at 71 (1948); Shutkin, *supra* note 61, at 489-90.

68. KSENTINI (91), *supra* note 55, ¶ 69. See also ALEXANDRE KISS & DINAH SHELTON, *INTERNATIONAL ENVIRONMENTAL LAW* 21-31 (1991).

69. KSENTINI (91), *supra* note 55, ¶ 102.

70. Shihata (88), *supra* note 16. Foreign investment in this period has been characterized as part of a cycle to increase output and consumption and thereby achieve greater economies of scale. ROBERT B. REICH, *THE WORK OF NATIONS* 67-68 (1991).

71. WORLD BANK, *THE WORLD BANK AND THE ENVIRONMENT, A PROGRESS REPORT* 1 (1991) [hereinafter *WORLD BANK AND THE ENVIRONMENT*].

72. International Bank for Reconstruction and Development, *Articles of Agreement*, art. 1, ¶ iii, Dec. 27, 1945, 2 U.N.T.S. 134.

73. WORLD BANK, *1991 ANNUAL REPORT* 3 (1991). Commentators argue this figure represents the degree of government commitments rather than the return on successful

Bank projects ostensibly aim to improve the standard of living in less industrialized nations, the incidence of poverty has actually risen in most countries implementing the structural adjustment programs imposed in conjunction with the IMF.⁷⁴ Environmentalists maintain that the World Bank loan portfolio supports unsustainable development in some cases, including projects with damaging social and environmental impacts that call for immediate reform of policy and structure.⁷⁵

The World Bank provides a good example for a discussion of applying human rights law to development banks. As the largest and oldest of the development banks, the World Bank has assumed a role as the leader in policymaking for smaller and newer international and regional development banks, such as the African Development Bank, the Asian Development Bank, and the Inter-American Development Bank.⁷⁶ The World Bank is recognized as the intellectual leader and influences policy changes in the other multilateral development banks.⁷⁷ Because of the weight of its capital and the far reaching effect of its guarantees and backing, many other investors follow once the World Bank has committed to a given project, making the procedures for World Bank determinations even more important. At the same time, other major development banks bear responsibility for the same types of problems as those created by the World Bank. Arguments made in this paper should apply equally to those banks.

Current controversies demonstrate the conflicts which can arise from interaction between the World Bank and other intergovernmental organizations, such as the U.N. Human Rights Commission. For instance, the World Bank has undertaken an 80 million U.S. dollar project to build roads and help with "forestry management" in Cote d'Ivoire, where only 1.5 million hectares (3.7 million acres) of forest

investments. Patricia Adams, *The World Bank and the IMF in Sub-Saharan Africa: Undermining Development and Environmental Sustainability*, 46 J. INT'L AFF. 97, 98 (1992).

74. TURK (92), *supra* note 44, ¶ 60.

75. GREENPEACE INTERNATIONAL, RESTRUCTURING THE GLOBAL ENVIRONMENT FACILITY: PROPOSALS SUBMITTED BY GREENPEACE INTERNATIONAL TO THE GLOBAL ENVIRONMENT FACILITY PARTICIPANT'S MEETING 1 (Dec. 3-4, 1991) (on file with author).

76. Rich, *supra* note 20, at 682. For more information on progress made regarding other multilateral development banks and bilateral assistance agencies, such as the U.S. Agency for International Development, see Muldoon, *supra* note 15. Other banks look to World Bank leadership, especially for the policy it forms through the results of structural adjustment programs. *Development: Savage Cut in EIB Loans to ACP Countries*, INTER PRESS SERVICE, Jan. 28, 1993, available in LEXIS, Nexis Library, IPS File.

77. Shihata (92), *supra* note 60, at 40.

are left of the 12.5 million hectares that existed in 1960.⁷⁸ An estimated 350,000 people will lose their homes, their neighborhoods, and their traditional and only means of livelihood when the project begins to commercially develop the forest that is their home.⁷⁹ In an internal memo leaked from the World Bank Environmental Department, Scott Guggenheim, a World Bank anthropologist, called the project the biggest forced resettlement ever.⁸⁰ Even if assured compensation, the people who migrate to the urban centers may end up in shantytowns, trying to find industrial work on the outskirts of crowded cities in order to match the standard of living they had in the forest.

Currently, there is no plan for the resettlement of the 350,000 people who live in the remaining forest. Nor has the World Bank taken steps to have Cote d'Ivoire follow through on its pledge of \$17.6 million to help local communities build their capacity for taking part in a more advanced economy, thereby channeling the impact that economic changes will have on the use of the land.⁸¹ Meanwhile, the forest and a more sustainable way of life will disappear, as is happening to the Penan in Malaysia.⁸² Also, in their new environs, those displaced by the project are likely to suffer a lack of basic facilities like drinking water, waste disposal, and hygienic living conditions.⁸³ Displaced people may have their human rights violated without being informed of the decisions that created these violations, or of the potential to have had some control over the project.

Another notorious example is that of the \$12 billion Sardar Sarovar project to build thirty dams on the Narmada River in India, which began in 1985 with a \$450 million loan from the World Bank.⁸⁴ The environmental workplan required by the end of 1985 was still unavailable in 1992.⁸⁵ The project has been criticized because in block-

78. Keith Bradsher, *Rain Forest Plan Stirs Debate at World Bank*, N.Y. TIMES, Oct. 14, 1991, at A4; *Cote d'Ivoire Forest Project Subject to Harsh Scrutiny*, WORLD BANK WATCH, Aug. 31, 1992, at 1, 7 [hereinafter WORLD BANK WATCH]. For information on other such projects, see Adams, *supra* note 73.

79. WORLD BANK WATCH, *supra* note 78, at 7; Bradsher, *supra* note 78.

80. Bradsher, *supra* note 78. See *infra* text accompanying notes 140-45.

81. WORLD BANK WATCH, *supra* note 78, at 7.

82. See generally HRA/NHI, *supra* note 6.

83. EL-HINNAWI, *supra* note 11, at 30-31.

84. John Tanner, *Development: India's Controversial Narmada Dam Reprieve Slammed*, IPS, Nov. 9, 1992, available in LEXIS, Nexis Library, IPS File; Jim Lobe, *Environment: Letter to World Bank Could Kill Indian Project*, INTER PRESS SERVICE, Oct. 15, 1992, available in LEXIS, Nexis Library, IPS File. See BRADFORD MORSE & THOMAS R. BERGER, INDEPENDENT REVIEW OF THE SARDAR SAROVAR PROJECT (1992).

85. MORSE & BERGER, *supra* note 84, at 352.

ing the flow of the Narmada River it will dislocate at least 300,000 people, disrupt the lives of thousands who live downstream, and flood at least 60,000 acres, which includes both arable land and endangered species' habitat.⁸⁶ Local authorities have been charged with police misconduct and physical intimidation of local protestors in the form of beatings, detentions, and violations of rights of free expression.⁸⁷ As opposition to the projects grew, the World Bank took the unusual step of engaging an independent review committee headed by former U.N. Development Programme Chief Bradford Morse.⁸⁸ The 363-page report found that the projects "are flawed, that resettlement and rehabilitation of all those displaced by the project is not possible under prevailing circumstances, and that the environmental impacts . . . have not been properly considered or adequately addressed."⁸⁹ Given evidence of mismanagement regarding environmental concerns and mounting popular resistance, the report concluded that progress was impossible except as a result of unacceptable means and urged the Bank to step back from the project and consider it afresh.⁹⁰ The Bank prepared a separate assessment and created an action plan which it hailed as "very constructive and encouraging."⁹¹ Morse responded by writing a letter accusing the World Bank of misrepresenting his findings and showing indifference to human rights and environmental standards.⁹² The Senate Foreign Operations Subcommittee found in the World Bank's behavior the same type of incremental strategy criticized by the review team.⁹³ Fundamental flaws in design and other failures reaching back to the origin of the projects could not be overcome by a patchwork of studies and post hoc remedies, according to

86. *Id.* at 6; *Turmoil in Europe; World Bank Vows to Weigh Environmental Effects of Project*, N.Y. TIMES, Sept. 21, 1992, at A9, available in LEXIS, Nexis Library, Currnt File; *Group Charges Taxpayer Funding India Dam Project is Violation of Endangered Species Act*, U.S. NEWswire, Oct. 14, 1992, available in LEXIS, Nexis Library, Currnt File.

87. Letter from Sen. Patrick Leahy, Senate Foreign Operations Subcommittee, to the Honorable Louis Preston, President, The World Bank 2 (July 13, 1992) (available from Senate Foreign Operations Subcommittee).

88. See generally MORSE & BERGER, *supra* note 84; *Turmoil in Europe*, *supra* note 86; Jim Lobe, *Finance: Protests over Dam Project Disrupts IMF/World Bank Meeting*, INTER PRESS SERVICE, Sept. 23, 1992, available in LEXIS, Nexis Library, Currnt File.

89. MORSE & BERGER, *supra* note 84, at xii.

90. *Id.* at 356-58; Lobe, *supra* note 84.

91. Lobe, *supra* note 84.

92. Letter from Bradford Morse & Thomas R. Berger, Sardar Sarovar Independent Review, to Lewis T. Preston, President, The World Bank 5 (Oct. 13, 1992), available in ECONET, Conference rainfor.worldb, Topic: Prof. Brad Morse ltr to World Bank.

93. Leahy, *supra* note 87.

the Senate Subcommittee.⁹⁴ In October 1992, despite the Morse review, the bank board approved additional funding but set a series of environmental benchmarks for India to meet by March 31, 1993.⁹⁵ In the end, on March 30, 1993, the Indian government decided to forego part of the future loans for the projects rather than to meet environmental benchmarks set out by the World Bank.⁹⁶

The sheer size and opportunities presented by World Bank projects create the setting for these problems. The use of "lending targets," or high quotas for desired lending, puts pressure on World Bank staff to invest money in big, industrial, capital-intensive projects, and it seems that this pressure continues to periodically overwhelm the best interests of the people involved.⁹⁷ A recent report indicates that 37.5 percent of World Bank projects completed in 1991 were unsatisfactory at completion.⁹⁸ The Wapenhans Taskforce attributed World Bank difficulties to over-optimism, the pressure to make money, declining financial management expertise, and insufficient management attention.⁹⁹ Predictably, local governments respond eagerly to the prospect of large inflows of capital which will benefit the class of citizens with the most power and largest industrial holdings. To protect those who are inadequately represented by their governments, policy makers must be extremely sensitive to the potential impact of the external costs of development projects. Otherwise, project managers grind down the opposition, making incremental changes in response to specific complaints regarding discrete impacts of the entire development. A better method would be to open up the review and approval of projects to outside organizations, as happened voluntarily in the Narmada Project.

Because international assistance agencies have substantial bargaining power, the successful integration of environment and develop-

94. *Id.*

95. Steven A. Holmes, *World Bank Restrictions Prompt India to Cancel Dam Project Loan*, N.Y. TIMES, March 31, 1993, at A4.

96. *Id.*

97. Plater, *supra* note 13, at 135-37.

98. Willi Wapenhans, World Bank Portfolio Management Task Force, *Effective Implementation: Key to Development Impact* (1992), cited in *Loan Failures Up to 1 in 3*, BANK CHECK Q., Nov. 1992, at 3; *World Bank Fails to Get Environmental Funds from Donors*, BUS. WIRE, Dec. 16, 1992, available in LEXIS, Nexis library, Currnt File.

99. Wapenhans, *supra* note 98. World Bank statements that supervisory inputs in the Sardar Sarovar projects were 10 times the World Bank average for India indicate that greater outside supervision is necessary. VICE PRESIDENT AND SECRETARY, INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, INDIA: THE SARDAR SAROVAR (NARMADA) PROJECTS MANAGEMENT RESPONSE, June 23, 1992, ¶ 36.

ment depends on the leadership of the international development banks, especially with regard to legal structures set up to prevent human rights abuses.¹⁰⁰ World Bank Vice President and General Counsel Ibrahim F.I. Shihata has published several articles expressing the Bank's position on many of the issues involved in protecting the environment with human rights standards.¹⁰¹ These positions include: promoting the interests set out in the right to development; increasing its focus on poverty, especially on the rise in unemployment and problems in urban planning; recognizing the needs and role of women in development; addressing the status of refugees and the environment; and ending the involuntary resettlement of local peoples.¹⁰² While this mandate emulates the objectives of U.N. human rights standards, the World Bank continues to refuse any U.N. judgment on its lending decisions.

Ironically, the Articles of Agreement of the World Bank limit its decisions by excluding considerations of human rights or politics.¹⁰³ Within loan negotiations, all non-economic or "political" factors, such as human rights concerns, are to be disregarded.¹⁰⁴ In dealing with U.N. resolutions and decisions, the World Bank has consistently claimed the need to maintain neutrality regarding the political affairs of borrowing nations. The "Bank is, and is required to function as, an independent international organization."¹⁰⁵

Such legal parameters may have been necessary to create the appearance of impartiality in the Cold War era of politics and polarization, but it is time to remove this legal impediment to the implementation of policies aimed at truly sustainable development. At the World Bank's formation, several nations opposed the formation of a body by the U.N. which would then function without review, asserting that the Articles of Agreement of the World Bank and the

100. TURK, *supra* note 44, at ¶ 42.

101. Shihata (88), *supra* note 16; Shihata (92), *supra* note 60.

102. Shihata (88), *supra* note 16, at 49, 56, 59-60, 63.

103. *Id.* at 46, citing Articles of Agreement, *supra* note 72, art. 1.

104. Shihata (88), *supra* note 16, at 47; see Thomas Hutchins, Note, *Using the International Court of Justice to Check Human Rights Abuses in World Bank Projects*, 23 COLUM. HUM. RTS. L. REV. 487, 511-13 (1992). See also Victoria E. Marmorstein, *World Bank Power to Consider Human Rights Factors in Loan Decisions*, 13 J. INT'L L. & ECON. 113, 114 (1978).

105. Shihata (88), *supra* note 16, at 42, citing Agreement Between the United Nations and the International Bank for Reconstruction and Development, Nov. 15, 1947, art. 1(2), 16 U.N.T.S. 346.

IMF violated the U.N. Charter.¹⁰⁶ While the World Bank and the IMF have open access to the deliberations of U.N. bodies, U.N. representation to both the World Bank and IMF has been confined to the Annual Meetings of Boards of Governors and the one-day meetings of the Interim and Development Committees, held twice a year.¹⁰⁷ The Bank does recognize U.N. input, but only to allow recommendations on technical aspects of reconstruction or development projects.¹⁰⁸ Efforts to change this one-way relationship will be difficult. While the World Bank may have relationships with other international organizations in related fields and considers issues raised by other organizations, the Bank may not engage in any arrangements for cooperation which would modify its own Articles of Agreement.¹⁰⁹ But given recent projects and indications of institutional biases, pressure is mounting to create an independent organization to monitor externally the implementation and assessment of World Bank projects, especially with regards to environmental assessments and resettlements.¹¹⁰ This poses interesting problems in the relations between international governmental organizations following UNCED, especially regarding World Bank procedures for environmental assessment and resettlement.

B. The World Bank and Environmental Assessments

World Bank Operational Directive 4.01 on Environmental Assessment calls for environmental assessments before development projects are undertaken,¹¹¹ recognizing that precaution may be

106. UNITED NATIONS, SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES, REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS, WRITTEN STATEMENT SUBMITTED BY THE AMERICAN ASSOCIATION OF JURISTS, A NON-GOVERNMENTAL ORGANIZATION IN CONSULTATIVE STATUS (CATEGORY II), ¶ 8, U.N. Doc. E/CN.4/Sub.2/NGO/7 (1991).

107. *Id.* ¶ 9.

108. Agreement Between the United Nations and the International Bank for Reconstruction and Development, Nov. 15, 1947, art. 4(3), 16 U.N.T.S. 346, at 350.

109. Articles of Agreement, *supra* note 72, art. 5, § 8(a).

110. See Pratap Chatterjee, *Bank Directors Call for Permanent Monitor*, Nov. 22, 1992, available in ECONET, Conference rainfor.worldb, quoting the Norwegian Executive Director as supporting an independent unit to monitor Bank projects and stem failures, and stating that the Dutch, German, and U.S. directors agree. The German director, Fritz Fischer, is quoted as comparing the World Bank management to "an unwilling dog that must be dragged to the hunting grounds."

111. Shihata (92), *supra* note 60, at 9. See generally INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, *Operational Directive 4.00, Annex A: Environmental Assessment* (Oct. 1989), in ENVIRONMENTAL ASSESSMENT SOURCEBOOK 27 (1991) [hereinafter ENVIRONMENTAL ASSESSMENT SOURCEBOOK]. Directive 4.00 was modestly

cheaper than the costs incurred through badly planned projects. While the World Bank will take environmental factors into account where they affect the soundness of an investment, it was not until recently that environmental assessments were formally included in decisions. In 1970, the World Bank formed its Environmental Department, and shortly thereafter issued guidelines for environmental assessment on the project level and on longer term regional or government plans.¹¹² However, it was not until 1989 that environmental assessment became mandatory.¹¹³

According to World Bank rules, the environmental assessment program separates projects into four categories according to impact, then subjects the projects to different levels of scrutiny according to that classification.¹¹⁴ Out of 229 projects approved in 1991, more than half escaped scrutiny as having no impact.¹¹⁵ Where environmental assessments are required, guidelines seem impressive, contained in an 850-page, three-volume reference manual; but there is no review of the assessments by any group or individual outside of the World Bank and the borrowing country. The World Bank considers the environmental assessment to be the property of the borrower nation and will go no further than to encourage the release of "relevant information to appropriate interested parties."¹¹⁶

Essentially, the World Bank takes sole responsibility for making sure that the project country has the technological and financial capability to prepare the environmental assessment. The same World Bank staff responsible for the appraisal and packaging of the project play a large role in setting the requirements of the assessment process, requirements which are conditions to receiving project financing.¹¹⁷ The staff determine the nature, magnitude and sensitivity of environ-

revised and renamed *Operational Directive 4.01 on Environmental Assessment* (Oct. 1991). In practice, on a national level, efforts have been underway in many nations to assess the damage done by government projects. A good example of the successes and failures of such a system is the U.S. National Environmental Policy Act of 1969 (NEPA), 42 U.S.C.A. § 4321-4370b (1969).

112. Horberry, *supra* note 40, at 849-50. See World Bank, ENVIRONMENTAL, HEALTH, AND HUMAN ECOLOGIC CONSIDERATIONS IN ECONOMIC DEVELOPMENT PROJECTS (1972).

113. WORLD BANK AND THE ENVIRONMENT, *supra* note 71, at 66. See R.J.A. Goodland, *The World Bank's Environmental Assessment Policy*, 14 HASTINGS INT'L & COMP. L. REV. 811 (1991).

114. WORLD BANK AND THE ENVIRONMENT, *supra* note 71, at 61.

115. *Id.*

116. ENVIRONMENTAL ASSESSMENT SOURCEBOOK, *supra* note 111, at 31, ¶ 25.

117. See *id.* note 111, at 27, ¶ 1 (stating that Annex A outlines World Bank policy and procedures for the environmental assessment of investment lending operations).

mental issues in the project, and have substantial discretion to identify environmental issues and set assessment requirements and schedules.¹¹⁸ In addition, the World Bank expects that the project government's assessment will represent a consideration of the views of affected groups and non-governmental organizations. This expectation, along with the required assessment and review, provides a basis for later supervision of the environmental aspects of project implementation.¹¹⁹ Recognizing the growing respectability of "people centered" development, the World Bank now claims that it would be "unlikely" to continue with a project that might have a significant environmental impact if the borrower declined to release the environmental assessment and refused to seek the informed view of the affected people.¹²⁰

The same staff, or even the borrower, also write up the final evaluation of the completed project for the ex post evaluation by the Operations Evaluation Department.¹²¹ Despite these policies and procedures, environmentally damaging projects may in fact go forward in borrowing nations which lack capacity to assess and prevent environmental degradation.¹²²

Despite the environmentalist overtures, where there is a conflict over the propriety of a development project, technical considerations of economy and efficiency guide the World Bank's work at all times. "Ideological" and "political" preferences are excluded.¹²³ Perhaps it is best that the World Bank not discriminate according to a people's choice of political system, refuse to consider members' political character, and avoid interfering with members' internal affairs.¹²⁴ The General Counsel argues that the only way to include considerations of democratization or governance issues would be to go through the difficult process of amending the Articles of Agreement to allow the Bank to go beyond technical considerations of economy and effi-

118. *Id.* ¶¶ 18-19.

119. *Id.* ¶¶ 25-27.

120. ENVIRONMENTAL ASSESSMENT SOURCEBOOK, *supra* note 111, at 191-92, ¶¶ 4-5.

121. Although a World Bank official acknowledges this process as "an exercise in self-evaluation," he claims that the process has not prevented project staff or borrowers from being frank or critical. WARREN C. BAUM, WORLD BANK, *THE PROJECT CYCLE* 23 (1982).

122. See, e.g., William Wilson, *Environmental Law as Development Assistance*, 22 ENVTL. L. 953, 973-74 (1992).

123. VICE PRESIDENT AND GENERAL COUNSEL, ISSUES OF "GOVERNANCE" IN BORROWING MEMBERS - THE EXTENT OF THEIR RELEVANCE UNDER THE BANK'S ARTICLES OF AGREEMENT 57-58 (Dec. 21, 1990) (available from the World Bank, Washington, D.C.).

124. *Id.* at 54.

ciency.¹²⁵ One might argue, however, that when development projects violate human rights by damaging the environment, the human rights concerns that arise do not relate to the political nature of the national government, but to respect for environmental due process.¹²⁶ Of course, some consideration of human rights or environmental issues has been deemed necessary where these elements begin to have an impact on the viability of the investment. Given the interrelation between human rights, the environment, and development,¹²⁷ the World Bank should reinterpret its Articles of Agreement to include these factors as intertwined with the soundness of investment in a given development project.

In addition, while the Environmental Assessment Operational Directive specifies that the World Bank should obtain the informed views of the people who may be adversely affected by a proposed project, it is unclear what weight these views are given in the decision-making process.¹²⁸ Again, there are substantial questions whether adequate resources are made available to adequately gather and digest information.¹²⁹ Though there are expectations that the environmental assessment should involve affected groups and non-governmental organizations (NGOs), the assessment is considered the property of the project country's government, and the World Bank mandates neither popular participation nor the release of information.¹³⁰ The Operations Evaluation Department, which assesses the efficiency and effectiveness of Bank projects, is only empowered to audit projects after they are completed.¹³¹ Outside oversight would be a sound means to guarantee the sustainable nature of World Bank projects and full consideration of environmental prerogatives.

125. *Id.* at 57-59. On February 16, 1989, the majority required to amend the Articles of Agreement was changed from 80% to 85%. Articles of Agreement, *supra* note 72, art. 8(a).

126. The trend towards international recognition of certain procedural rights vis-a-vis actions which would have an adverse impact on the environment is well articulated in SIERRA CLUB LEGAL DEFENSE FUND, HUMAN RIGHTS AND THE ENVIRONMENT, THE LEGAL BASIS FOR A HUMAN RIGHT TO THE ENVIRONMENT 45-49 (1992) (on file with author).

127. See generally RIO DECLARATION, *supra* note 29.

128. WORLD BANK AND THE ENVIRONMENT, *supra* note 71, at 69.

129. Rich, *supra* note 20, at 726, citing *Environmental Impact of Multilateral Development Bank Funded Projects: Hearings Before the Subcomm. on International Development Institutions and Finance of the House Comm. on Banking, Finance and Urban Affairs*, 98th Cong., 1st Sess. 29, 50, 62-74 (1983).

130. Goodland, *supra* note 113, at 814, 816.

131. WORLD BANK, ANNUAL REPORT 1991 87-88 (1991).

This is not to say that there have not been positive results from World Bank activities in the past. As an international governmental organization, the World Bank has made some overtures not only to advance the economic well-being of borrowing nations, but to ameliorate existing environmental problems.¹³² The Bank, for example, has encouraged building environmental safeguards into industrial development projects, as occurred in the Valesul Aluminum Project in Brazil.¹³³ There, the World Bank included pollution control equipment in the construction of a plant, due to its own concerns about environmental impacts and economic repercussions rather than the mandate of the weak laws of Brazil.¹³⁴ The forces which brought about this more sustainable development should be encouraged, but cannot be expected to result from World Bank initiative alone. Along with planning for the environmental impact of projects, the World Bank must make further changes in its operations regarding the human impact of projects.

C. The World Bank and Involuntary Resettlements

Sustainable development requires protection of the environment and the rehabilitation of people directly affected by projects. The World Bank established its first Operational Directive on Involuntary Resettlement in 1980 in recognition of the problem of people involuntarily displaced by development projects. According to former policy, the World Bank would discuss the policies and plans for resettlement sites with the borrower, institute legal arrangements, assure that planning and financing of resettlement be part of the lending plan, and include Bank supervision of these plans.¹³⁵ In 1990, this policy was upgraded by a new Operational Directive to reduce further the incidence of involuntary resettlement, provide the displaced with the means to maintain their former living standards, increase public participation, and create valuation principles for compensation of those affected.¹³⁶ However, the standards set out by the operational directive are neither mandated nor subject to independent review, but are merely encouraged.¹³⁷ While the success of involuntary resettlement

132. Shihata (92), *supra* note 60, at 14-19.

133. Shihata (88), *supra* note 16, at 62.

134. *Id.*

135. *Id.* at 63-64.

136. Shihata (92), *supra* note 60, at 12.

137. WORLD BANK, *Operational Directive 4.30: Involuntary Resettlement*, ¶ 4 (June 1990) [hereinafter OD 4.30]; Shihata (92), *supra* note 60, at 12-13; *see, e.g.*, Hutchins, *supra* note 104.

and its effect on both those resettled and the host population are monitored by the project manager, there is no appeal of the determination or post-relocation remedy available to the people affected.¹³⁸ The Operational Directive suggests culturally acceptable strategies to protect the subsistence of vulnerable groups such as women and indigenous peoples, at the same time that vocational training and employment counseling are urged to exploit the new economic opportunities created by the main investment.¹³⁹ There are no provisions for realization of human rights standards.

The Cote d'Ivoire forestry management project mentioned above calls into question the success of these Operational Directives. The project plans to provide \$80 million for "forest management" of a large area of West African rainforest.¹⁴⁰ The U.S. Senate has objected to the health risk posed by forced urbanization and raised questions as to notice, open decision-making, and popular participation by the affected population.¹⁴¹ The U.S. World Bank Executive Director even abstained on environmental grounds from the Bank's decision to continue with the project.¹⁴² Yet, the World Bank Officer for the region has denied that the project constitutes forced resettlement because the people who are paid to leave the area are doing so "voluntarily."¹⁴³

International interest and new World Bank Forestry practices have prompted assurances of due care and the creation of a commission to deal with the people living in the tropical rainforest. An NGO field delegation assessing the implementation of the Cote d'Ivoire forestry project in early 1992 found that no national plan had been prepared for the resettlement, the commission for consultations with affected people operated in a closed door fashion, no funds had been earmarked for compensation, nor had land of equal value been identified for resettlement.¹⁴⁴ Ten million dollars allocated to build capacity for overseeing the project by training forest rangers and technicians had been invested in the forestry schools.¹⁴⁵ Failure to follow through

138. OD 4.30, *supra* note 137, at 8; *see, e.g.*, Hutchins, *supra* note 104.

139. OD 4.30, *supra* note 137, at 5; *see, e.g.*, Hutchins, *supra* note 104.

140. Bradsher, *supra* note 78. Questions persist as to what this money is intended for, but the World Bank denies that the project includes funds for the building of roads for logging. Letter from the World Bank to the New York Times (available from D.D. Coroneil, World Bank, Washington, D.C.)

141. Senate Letter, *supra* note 2, at 4.

142. *Id.* at 3.

143. Bradsher, *supra* note 78.

144. PATRICK MURPHEY, WORLD WIDE FUND FOR NATURE, COTE D'IVOIRE FOREST SECTOR PROJECT IMPLEMENTATION ASSESSMENT 6 (June 1992).

145. *Id.* at 7.

on all aspects of the project risks intensifying unsustainable development as the infrastructure built into the rainforest for forestry management is used for forest exploitation. This case, a disaster in the making, is just one example of the need for greater oversight of the World Bank regarding its own compliance with human rights standards.

Further, in the Narmada project mentioned above, the *Narmada Bacao Andolan* (Save the Narmada) movement warned that the Indian authorities' attempts to meet new World Bank benchmarks would lead to increased human rights abuses.¹⁴⁶ The outcome of continuing resettlement efforts echoes the admonishment of Bradford Morse's independent review, which concluded that ecological realities must be acknowledged, and unless a project can be carried out in accordance with existing human rights norms—norms espoused and endorsed by the Bank and many borrower countries—the project ought not to proceed.¹⁴⁷ The incremental approach taken by the World Bank finally collapsed when the Indian government decided not to seek the remaining \$170 million for the \$3 billion project, rather than comply with the standards agreed to in earlier loans.¹⁴⁸

D. Other Major International Financial Institutions

The pressures mounting on the World Bank have affected other sectors of the international financial regime. Not only have Executive Directors' votes influenced the World Bank to focus more on environmental concerns, but the momentum from UNCED and the imminent changes in the U.N.'s development activities are encouraging the Bank to change its ways. The Rio Declaration and Agenda 21 documents herald a shift in the dialogue regarding the ends as well as the means of all the major development banks, and the underlying sense of rights and responsibilities that power the capital markets. While

146. Reports are numerous. In Bombay on November 14, 1992, thirty activists were apparently beaten and arrested outside Lewis Preston's hotel while protesting his failure to meet with them. *Report from Bombay*, SUNDAY OBSERVER, Nov. 15, 1992, available in ECONET, Conference rainforest.worldb, Topic: Alert: Narmada Activists Arrested. On November 21, 1992, 120 people were arrested on their way to a consultation with the World Bank on resettlement. *Narmada Update: Over 170 Villagers Arrested During World Bank-Supported "Consultations"*, available in ECONET, Conference rainfor.worldb, Topic: SSP: 170 Villagers arrested in MP. On December 28, 1992, 250 people were arrested outside the Sardar Sarovar Narmada Development Cooperation. THE TIMES OF INDIA, AHMEDABAD, Dec. 29, 1992, available in ECONET, Conference rainfor.worldb, Topic: SSP: 250 Villagers held in Baroda.

147. MORSE & BERGER, *supra* note 84, at 358.

148. Holmes, *supra* note 95.

other major development banks, such as the African Development Bank, the Inter-American Development Bank, and the Asian Development Bank have not developed environmental procedures to the same extent as the World Bank, they should be included in the application of the same standards. The benefits of assuring sustainable development in individual World Bank projects will not be successful unless reforms are pervasive throughout international financial institutions.

The IMF, set up at the same time as the World Bank to establish monetary policy, has turned its attention to the environmental effects of its activities by proclaiming a clear environmental stance.¹⁴⁹ In early 1991, the IMF informally considered the extent to which it should address environmental issues and pledged to devote modest additional resources to tap international governmental organizations with environmental expertise.¹⁵⁰ At the same time, the IMF has been careful to avoid any concrete conditions on its activities.¹⁵¹

The IMF, however, shares responsibility for the havoc wreaked on less developed countries. As countries maintain less domestic control over local economic processes, international finance agencies such as the World Bank and the IMF use the structural adjustment process to direct externally the national economic development processes in borrowing countries. Structural adjustment loans for balance of payments support are conditioned on statements of objectives to increase exports and establish monitorable measures and actions to be taken by governments.¹⁵² The IMF requires some member states to undergo austere structural adjustment programs which mandate privatization, international debt repayment, and reductions in public expenditure and social services.¹⁵³ While these policies tend to increase mobile capital and the well-being of resource holders, they lead to neglect of the country's infrastructure, environment, and decrease an economy's ability to sustain its population.¹⁵⁴

A statement by the Director General of the World Health Organization in mid-1991 makes explicit the connections between interna-

149. INTERNATIONAL MONETARY FUND, 1991 ANNUAL REPORT 54 (1991).

150. *Id.*

151. *Id.*

152. Rich, *supra* note 20, at 687, citing S. PLEASE, THE HOBBOLED GIANT: ESSAYS ON THE WORLD BANK 29 (1984).

153. Turk (92), *supra* note 44, at 18; World Bank loans to affect these adjustments make up over one-quarter of current World Bank loans. See also Adams, *supra* note 73, at 103.

154. Adams, *supra* note 73, at 103; Cameron Duncan, *Internal Report Card Looks Bad for Structural Adjustments*, BANK CHECK Q., Nov. 1992, at 7.

tional financial organizations and the crisis of water pollution which led to the cholera epidemic that eventually, and ironically, threatened the Rio Conference.

The economic adjustment programme dictated by the International Monetary Fund (IMF) is responsible for the increasing cholera epidemic in Peru Without a doubt, in order to comply with payments claimed by the International Monetary Fund (IMF) and the World Bank (WB), Peru now finds itself in the position that it cannot allocate more resources to fight the cholera epidemic¹⁵⁵

Because of the need to meet the austere IMF program, Peru, like many less developed nations, was unable to provide needed sanitation and clean drinking water to its people. In this way, structural adjustment programs are accused of interfering with the realization of human rights, in particular the rights to work, food, housing, health, education and development.¹⁵⁶ In response, the IMF claims that the programs it supports only succeed through the full support of the population, and that failures are the result of incomplete economic reforms.¹⁵⁷ The UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities passed a resolution urging international financial institutions to take greater account of the adverse impacts of their structural adjustment policies and programs on the realization of economic, social, and cultural rights.¹⁵⁸ The IMF has used its bargaining power to ensure that more borrower funds will be used for "safety nets" by requiring that adequate provisions for social services and infrastructure investment are part of loan programs.¹⁵⁹ But there still is a long way to go. The IMF should take its responsible place in the new international environmental regime. It should articulate new economics for a global financial system and ad-

155. *Peru: WHO Blames IMF for Cholera Epidemic*, THIRD WORLD RESURGENCE, No.10 (1991).

156. UNITED NATIONS, SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES, THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS, SECOND PROGRESS REPORT PREPARED BY MR. DANIELLO TURK, SPECIAL RAPPORTEUR, U.N. Doc. E/CN.4/Sub.2/1991/17 (1991), ¶¶ 124-147 [hereinafter Turk (91)].

157. UNITED NATIONS, SUB-COMMISSION OF THE PREVENTION OF DISCRIMINATION AND THE PROTECTION OF MINORITIES, THE REALIZATION OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS, WRITTEN STATEMENT SUBMITTED BY THE INTERNATIONAL MONETARY FUND, ¶ 7, U.N. Doc. E/CN.4/Sub.2/1991/63 (1991).

158. UNITED NATIONS, SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES, REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-THIRD SESSION, at 60-62, U.N. Doc. E/CN.4/1992/2 (1991), citing Subcommittee Resolution 1991/27.

159. WRITTEN STATEMENT SUBMITTED BY THE IMF, *supra* note 159, ¶¶ 4-5.

here to the environmental mandates which flow from human rights and the new standards discussed below.

International environmental standards that are developing are also of imminent importance to transnational corporations. While they are private entities, less likely to fall under the control of the network of international governmental organizations, the private sector must be made to yield to these standards. Because of their assets, transnationals get more scrutiny than local developers, are subject to different demands from different forums, have the means to incorporate improved technology, and may find it more efficient to create a level playing field in environmental regulation and therefore cheaper to encourage pollution prevention.¹⁶⁰ Transnationals are particularly important in the realization of environmental human rights standards in that they are the operative actors in the international forum, especially with regard to transferring environmentally sound technology. For this reason, at UNCED, Peru suggested that as operative international actors, the chief executive officers of the largest transnational corporations be included on committees regarding environment and development.¹⁶¹ In this way, private organizations and economic structures can be harmonized into the work of sustainable development.

E. General Agreement on Tariffs and Trade

Another aspect of the international financial scheme which affects the realization of sustainable development is the international coordination of investment and trade, most of which focuses on investment liberalization.¹⁶² Open markets are still considered an integral part of creating resources needed for environmental protection.¹⁶³ While countries have not made the progress expected in Uruguay Round talks, trade liberalization through free trade blocs and privatization achieved under the structural adjustment programs

160. Ann Rappaport & Margaret Flaherty, *Multinational Corporations and the Environment: Context and Challenges*, 14 INT'L ENV'T. REP. 261, 263 (1991).

161. UNITED NATIONS, PREPARATORY COMMITTEE FOR THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, LETTER DATED 27 JUNE 1991 FROM THE PERMANENT REPRESENTATIVE OF PERU TO THE UNITED NATIONS OFFICE AT GENEVA ADDRESSED TO THE SECRETARY-GENERAL OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, U.N. Doc. A/CONF.151/PC/81 (1991).

162. See, e.g., *G-7 Declaration, Houston Summit*, BNA INT'L. TRADE REP. July 18, 1990, available in LEXIS, Nexis Library, BNA File.

163. *G-7 Declaration, London Summit*, BNA INT'L. TRADE REP. July 24, 1991, ¶ 47, available in LEXIS, Nexis Library, BNA File.

have increased development without a corresponding measure of planning, oversight, or balancing. In 1947, the General Agreement on Tariffs and Trade (GATT) initially contemplated a protocol for international trade organizations which would have allowed for greater regulation of international trade and development.¹⁶⁴ Negotiations, however, never moved beyond commercial policy and enthusiasm waned.¹⁶⁵ While the absence of tariffs may help competitive efficiency, GATT should not ban trade limits or other measures which local governments may adopt to restrict the power of monopolies, balance asymmetries in markets, or internalize externalities.¹⁶⁶ While relevant to the finance of sustainable development, trade liberalization and its effects on development and environmental protection are separate issues for future resolution.

Part of this future resolution must involve changes in regulation of the private sector. Some of the hardest questions addressed in the UNCED process relate to the need to reconcile the various rights implicated by the environment and development with the preservation of intellectual property rights. The Executive Director of the U.N. Center on Transnational Corporations proposed increasing the environmental responsibilities of transnational corporations.¹⁶⁷ A voluntary fund for transnational corporations could assist with technology transfers for environmental protection.¹⁶⁸ Acting on suggestions in the international community, UNCED sought to implement environmental rights in the forum of international trade - especially in the work of those institutions concerned with financing environmentally sensitive development, e.g., the Global Environment Facility and World Bank. With this in mind, UNCED drafted Agenda 21 to make structural changes in the finance of development in order to bring about more sustainable development.

164. Edmund M.A. Kwaw, *Trade Related Investment Measures in the Uruguay Round: Towards a GATT for Investment?*, 16 N.C. J. INT'L L. & COM. REG. 309, 313-15 (1991).

165. *Id.*

166. *Id.* While important for full realization of environmental rights, integration of environmental rights and monetary and trade policy are beyond the scope of this Note.

167. UNITED NATIONS, PREPARATORY COMMITTEE FOR THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, CONTRIBUTION OF THE COMMISSION ON TRANSNATIONAL CORPORATIONS TO THE PREPARATORY PROCESS OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, NOTE BY THE SECRETARIAT, ¶ 53, U.N. Doc. A/CONF.151/PC/68 (1991), available in ECONET, Conference en.unced.document, Topic No.174.

168. *Id.*

V. THE FUTURE STRUCTURE OF INTERNATIONAL DEVELOPMENT FINANCE

Implementation of UNCED requires meaningful participation by individuals and popular organizations. This requires changes in the concept and structure of the international welfare cycle to make the individual the subject, not the object, of development.¹⁶⁹ If the multi-lateral development banks do not take part in the mandated changes they will increasingly be seen as the reason vulnerable peoples do not benefit from their own natural resources.¹⁷⁰ "Sustainable development" will become a vehicle for accelerating the pillaging of the Earth, without empowering those intended as its subject. Proposals for implementation generally include increasing the transparency of the decision-making process; disseminating information regarding development projects; promulgating regulations regarding the decision-making processes; and increasing the role played by NGOs.¹⁷¹ It is important that the ongoing institutional nature of the problem not lose significance in the rush to accelerate development now certified as sustainable.

A. Sustainable Development Commission

The divergent operations of different international organizations dealing with the environment and development require a systematic means to assure coordination.¹⁷² The U.N. is itself undergoing dynamic institutional changes. A 1991 U.N. resolution adopted guidelines for restructuring the U.N. in the economic, social and related fields.¹⁷³ The Secretary-General reorganized the U.N. Secretariat in early 1992 to streamline the administrative activity of that office in some of the areas concerning the UNCED participants and Agenda

169. GLOBAL CONSULTATION ON THE RIGHT TO DEVELOPMENT, *supra* note 22, at 32-35.

170. *Id.* at 36. One hundred fifty young protestors burned World Bank materials at the booth set up at the UNCED Global Forum to protest that the World Bank is the largest funder of environmentally destructive projects in the world. *A Run on the Bank at Rio*, BANK CHECK Q., July 16, 1992.

171. GLOBAL CONSULTATION ON THE RIGHT TO DEVELOPMENT, *supra* note 22, at 37-38.

172. UNITED NATIONS, PREPARATORY COMMITTEE FOR THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, PROGRESS REPORT ON INSTITUTIONS, REPORT OF THE SECRETARY-GENERAL OF THE CONFERENCE, ¶ 7, U.N. Doc. A/CONF.151/PC/80 (July 25, 1991) [hereinafter PROGRESS REPORT].

173. *Restructuring and Revitalization of the United Nations in the Economic, Social and Related Fields*, G.A. Res. 45/264, U.N. GAOR, 45th Sess., Supp. No. 49A, U.N. Doc. A/45/49/Add.1 (1991).

21 drafters.¹⁷⁴ A large number of UNCED delegations expressed their opposition to the proliferation of new global institutions.¹⁷⁵ A number of countries cited extra overhead and unnecessary duplication, urging that a new global institution not be considered unless proven necessary.¹⁷⁶

Proposals at UNCED included the creation of a Sustainable Development Commission, like the Commission on Human Rights, an environmental security council, and an international ombudsman.¹⁷⁷ While some parts of the U.N. are being integrated and streamlined, UNCED established that the environment and development will receive special attention.

Despite opposition to new bodies, UNCED negotiators created a Commission on Sustainable Development (CSD) to ensure effective follow-up of the Conference and to monitor Agenda 21's implementation, including progress on financial institutions, transfer of technology, capacity building, and international institutional arrangements.¹⁷⁸ The CSD is a high-level Commission which reports to the Economic and Social Council of the U.N.¹⁷⁹ The U.N. Secretary-General will provide direct leadership and system-wide coordination for the implementation of Agenda 21 through the Administrative Committee on Coordination, which will link the multilateral financial institutions and

174. Paul Lewis, *U.N. Chief Reshapes Bureaucracy So He Can Focus on Peacemaking*, N.Y. TIMES, Feb. 9, 1992, at A4.

175. UNITED NATIONS, PREPARATORY COMMITTEE FOR THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, INSTITUTIONAL PROPOSALS - I, REPORT OF THE SECRETARY-GENERAL OF THE CONFERENCE, ¶ 4, U.N. Doc. A/CONF.151/PC/102 (1991) available in ECONET, Conference en.unced.document, Topic No. 256 [hereinafter INSTITUTIONAL PROPOSALS - I].

176. *Id.*

177. UNITED NATIONS, PREPARATORY COMMITTEE FOR THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, INSTITUTIONAL PROPOSALS - II, REPORT BY THE SECRETARY-GENERAL OF THE CONFERENCE, ¶ 108, 165, U.N. Doc. A/CONF.151/PC/102 (1991) [hereinafter INSTITUTIONAL PROPOSALS - II].

178. UNITED NATIONS, UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, AGENDA 21, CHAPTER 38, INTERNATIONAL INSTITUTIONAL ARRANGEMENTS, ¶¶ 38.11-38.14, July 14, 1992 available in ECONET, Conference en.unced.docum [hereinafter AGENDA 21, INSTITUTIONAL ARRANGEMENTS]. Report of the United Nations Conference on Environment and Development, ¶¶ 3-5, U.N. Doc. A/C.2/47/L.61, cited in International Institute for Sustainable Development, *Earthnegs.bulletin UNGA47 16 Dec*, EARTH NEGOTIATIONS BULLETIN, available in ECONET, Conference en.unced.news.

179. AGENDA 21, INSTITUTIONAL ARRANGEMENTS, *supra* note 178, ¶ 38.11. See also UNITED NATIONS, UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, INSTITUTIONAL ARRANGEMENTS TO FOLLOW UP THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, REPORT OF THE SECRETARY-GENERAL, § IV, U.N. Doc. A/47/598 (1992) [hereinafter REPORT OF UNCED].

other U.N. bodies, and will have the authority to establish special task forces.¹⁸⁰ The CSD will evaluate and review priorities, make scientific risk assessments, respond to environmental emergencies, offer a support system to organizations involved in sustainable development, and supervise compliance by bodies outside the U.N., based on the human rights and environmental standards enumerated above.¹⁸¹ In doing so, it will need to interact with five main international governmental organizations, which have the capacity to build on the earlier efforts at global environmental protection: the U.N. Environmental Programme (UNEP); the U.N. Development Programme (UNDP); the Commission on Human Rights; the Sub-Commission on the Prevention of Discrimination and Protection of Minorities; and such international financial institutions as the World Bank.¹⁸²

The CSD's teeth in exercising its mandate over the structure of multilateral development finance are its power to monitor the activities of the multilateral development banks, and to elaborate policy recommendations to the U.N. Economic and Social Council and through it to the General Assembly.¹⁸³ However, while multilateral development banks will take part in the deliberations of the CSD, making reports on their implementation of Agenda 21 and serving in an advisory capacity,¹⁸⁴ there will be no reciprocal representation of the CSD over the projects and activities of the banks. The CSD must be able to encourage greater recognition of human and environmental rights by governments and multilateral development institutions. To achieve this, the CSD should be given power to review the actions of development actors, judging the adequacy of environmental assessments, supervising the provision of adequate information to affected groups and meaningful participation by these groups, and ensuring that any necessary resettlements are done freely and are economically viable. The broad allocation and sharing of responsibility recognized at UNCED should be mutual between the U.N. and the

180. AGENDA 21, INSTITUTIONAL ARRANGEMENTS, *supra* note 178, ¶¶ 38.16-38.17. See also REPORT OF UNCED, *supra* note 179, ¶ 45.

181. REPORT OF UNCED, *supra* note 179, ¶ 12.

182. *Id.* ¶¶ 26, 29.

183. REPORT OF UNCED, *supra* note 179, ¶¶ 13, 29, 34. The merit of such teeth are debatable given projects like the Sardar Sarovar project described above.

184. AGENDA 21, INSTITUTIONAL ARRANGEMENTS, *supra* note 178, ¶ 38.41; REPORT OF UNCED, *supra* note 179, ¶ 29. The World Bank, GEF, and other financial and development institutions are invited to submit reports on CSD activities in an advisory capacity, but will not necessarily report on individual projects. *Id.*

multilateral funding institutions.¹⁸⁵ Thus the CSD should be empowered to ensure that development does not occur at the destructive pace that occurred in developed nations.

B. The Global Environment Facility

The World Bank established its Global Environment Facility (GEF) to help less industrialized nations pay for projects that would have a positive environmental effect.¹⁸⁶ Founded for special environmental projects, the GEF acts as the major conduit for the flow of technology and as a concessionary funding mechanism to help less industrialized nations meet their obligations under new environmental obligations.¹⁸⁷ The GEF will play the same role as the Multilateral Fund, which was designed to help less developed countries meet their obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer.¹⁸⁸ The three-year, \$1.5-billion fund was established to support some of the same goals as UNCED: to reduce global warming; preserve biodiversity; protect international waters; and protect the ozone layer.¹⁸⁹ In explaining GEF, the World Bank cites the need for more industrialized nations to help share the costs of preserving the global commons.¹⁹⁰

The GEF now operates in conjunction with: the World Bank, which acts as trustee and administrator; UNDP, which helps with the pre-investment studies; and UNEP, which provides environmental ex-

185. UNITED NATIONS, STATEMENT OF THE ADMINISTRATIVE COMMITTEE ON COORDINATION TO THE GENERAL ASSEMBLY, ADDENDUM, REPORT OF THE SECRETARY-GENERAL, ¶ 4, U.N. Doc. A/47/598/Add.1.

186. Shihata (92), *supra* note 60, at 29, 31-36; *G-7 Declaration, Houston Summit*, *supra* note 162.

187. Shihata (92), *supra* note 60, at 29-32; *G-7 Declaration, London Summit*, *supra* note 163.

188. France, Italy, the United Kingdom, and the Netherlands want to consolidate the Montreal Protocol Multilateral Fund into the GEF, abandoning the terms of concessionary transfer of technology necessary to reduce ozone depleting gases agreed to in that treaty. *Cuts in Methyl Bromide Production, CFC Phaseout Agreed to*, BNA INT'L ENVTL DAILY, Nov. 30, 1992, available in LEXIS, Nexis Library, Currnt File. While less developed countries have equal representation on the Multilateral Fund's Board, the GEF will likely apportion representation by contribution. Edward Flatau, *Our Environment*, GANNETT NEWS SERVICE, Sept. 17, 1992, available in LEXIS, Nexis Library, Currnt File.

189. Shihata (92), *supra* note 60, at 32-33. The eligibility criteria set out by STAP include the general rule that projects be funded when unlikely to occur without funding because domestic costs are greater than domestic benefits, but global benefits are greater than domestic costs. *GEF Completes Initial Portfolio of Projects*, *supra* note 45.

190. WORLD BANK, ANNUAL REPORT 1991 61 (1991).

pertise through a Scientific and Technical Advisory Panel.¹⁹¹ At UNCED, GEF was included among the funding sources named to cover the incremental costs of relevant activities under Agenda 21.¹⁹² It was encouraged to restructure to allow for universality of membership, ensure transparent and democratic governance, allow representation by donors and less developed countries, and ensure additional financial resources on grant and concessional terms, without conditionality, based on equitable burden-sharing.¹⁹³ Decisions during the pilot phase have been made by consensus.¹⁹⁴ But in the future, voting, which will only happen on broad policy decisions, may be done through a weighted system giving power to both the contributing developed and developing nations.¹⁹⁵

UNEP is primarily designed to act as a catalyst for and developer of international environmental standards.¹⁹⁶ The program assists parties in drafting instruments for international and regional environmental protection, including environmental assessment of problems and drafting terms.¹⁹⁷ UNEP strategies start by establishing a solid scientific core, then deliberating through technical and legal working groups, building constituencies, establishing broad guidelines, and finally, settling on a binding convention.¹⁹⁸ UNEP is also an informational clearinghouse. Since its creation in 1970, UNEP has operated: the Global Environmental Monitoring System, which coordinates data; the International Referral System for Sources of Environmental Information, which disseminates information; the International Register of Toxic Chemicals, which maintains information on 300 dangerous chemicals; and the World Environmental Report.¹⁹⁹ UNEP's services are in high demand, but its resources are thin. Therefore, an important component of any expansion of UNEP authority should include

191. Shihata (92), *supra* note 60, at 32; *Environment: World Bank Pushing Ahead on GEF*, INTER PRESS SERVICE, Dec. 13, 1991, available in LEXIS, Nexis Library, IPS File.

192. AGENDA 21, FINANCIAL RESOURCES, *supra* note 38, at ¶ 33.16 (a)(iii).

193. *Id.*

194. GLOBAL ENVIRONMENTAL FACILITY, REPORT BY THE CHAIRMAN TO THE DECEMBER 1992 PARTICIPANTS' MEETING, PART ONE: MAIN REPORT 23 (1992) [hereinafter GEF, REPORT BY THE CHAIRMAN] (available from World Bank, Washington, D.C.).

195. *Id.* at 23; GLOBAL ENVIRONMENTAL FACILITY, THE GLOBAL ENVIRONMENTAL FACILITY: BEYOND THE PILOT PILOT PHASE, 7 (May 4, 1992) (available from the World Bank, Washington, D.C.).

196. Mark Allen Gray, *The United Nations Environment Programme: An Assessment*, 20 ENV'T. L. 291 (1990); OUR COMMON FUTURE, *supra* note 21, at 270.

197. Gray, *supra* note 196, at 301.

198. Carol A. Petsonk, *Recent Developments in International Organization*, 5 AM. U. J. INT'L L. & POL'Y 351, 366-67 (1990).

199. Gray, *supra* note 196, at 306.

much more funding, as discussed in the Agenda 21 programs. There were suggestions that the UNEP and UNDP co-chair the regional administrative functions of UNCED.²⁰⁰ Overseeing its own actions with the World Bank and UNDP in the GEF epitomizes the tangle of authority hindering responsible governance in the fields of human rights, development, and finance.

UNDP was created in order to oversee various development funds, coordinate international aid and development projects for less industrialized nations, and to set policy for technical cooperation through funds from outside the U.N. budget.²⁰¹ Its decentralized and field-based decision-making process focuses on building the capacities of less developed nations so that they can take charge of their own sustainable development.²⁰² UNDP has indicated an increasing willingness to implement environmental rights as part of its complementary role in helping countries build the capacity necessary for environmental protection, and shown a willingness to assist with the UNCED mandate. The Development Programme requests regional consultations to identify the concerns of less industrialized countries.²⁰³ It also requests expansion of the presence of and consultation with NGOs and grassroots groups.²⁰⁴ UNDP works toward (a) a sustainable development network, and (b) application of environmental

200. See generally, *id.*; UNITED NATIONS, PREPARATORY COMMITTEE FOR THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, OTHER LEGAL, INSTITUTIONAL AND RELATED MATTERS, AS WELL AS LEGAL AND INSTITUTIONAL ASPECTS OF CROSS-SECTORAL ISSUES, ROLE OF REGIONAL ORGANIZATIONS AND COOPERATION (SECTION IV, CHAPTER 7 OF AGENDA 21), REPORT OF THE SECRETARY-GENERAL OF THE CONFERENCE, ¶ 9, U.N. Doc. A/CONF.151/PC/100/Add.26 (1992) available in ECONET, Conference en.unced.document, Topic No. 261 [hereinafter AGENDA 21, LEGAL ASPECTS].

201. UNITED NATIONS, GOVERNING COUNCIL OF THE UNITED NATIONS DEVELOPMENT PROGRAMME, REPORT ON THE ORGANIZATIONAL MEETING FOR 1990, at 14-15, U.N. Doc. ESCOR/1990/Supp.9 (1990).

202. UNITED NATIONS, GOVERNING COUNCIL OF THE UNITED NATIONS DEVELOPMENT PROGRAMME, REPORT OF THE ADMINISTRATOR, ENVIRONMENT AND DEVELOPMENT: UNDP AND THE NEW EMERGING NEEDS OF SUSTAINABLE DEVELOPMENT, at 3, U.N. Doc. DP/1992/14 (1992) [hereinafter GOVERNING COUNCIL, UNDP AND THE NEW EMERGING NEEDS OF SUSTAINABLE DEVELOPMENT].

203. GOVERNING COUNCIL ON THE UNITED NATIONS DEVELOPMENT PROGRAMME, REPORT ON THE ORGANIZATIONAL MEETING FOR 1990, Decision 90/13, HUMAN DEVELOPMENT, *supra* note 201, at 54.

204. GOVERNING COUNCIL ON THE UNITED NATIONS DEVELOPMENT PROGRAMME, REPORT ON THE ORGANIZATIONAL MEETING FOR 1990, Decision 90/18, NON-GOVERNMENTAL AND GRASSROOTS ORGANIZATIONS, *supra* note 201, at 58.

management guidelines at all program and project level cycles.²⁰⁵ UNDP also stresses response and reaction to development problems posed by refugees and displaced persons.²⁰⁶ Given its pledge and its mandate, UNDP was suggested by the Secretary-General of the Conference as the lead agency in coordinating a core group for global action in Agenda 21, especially given its capacity building initiative and designated role as a coordinator in the U.N. system.²⁰⁷ As co-manager of the GEF, UNDP has pushed for changes in the scope of the Facility's mandate and governance.²⁰⁸

While the GEF is a step in the right direction, it is disturbing that this same type of environmentally active thinking does not inform the World Bank's main business. The GEF will receive some UNEP and UNDP input into its development cycle, but the administration of these funds will be controlled by the World Bank. Also, the World Bank continues to fend off external regulation or formalized oversight, despite the recognition that this involvement is beneficial. Rather, the GEF is a separate organization, held out by the World Bank to show that it is concerned about the environment, while projects like the Cote d'Ivoire forestry management or the Sardar Sarovar Dam continue to be implemented. Critics argue that if the GEF does not serve to redirect financial flows of the major development banks, it will be a marginal force in global development.²⁰⁹

Just prior to UNCED, the World Bank reviewed the GEF's Pilot Phase. GEF isolated some guiding principles based on its operation in the first year: to focus on country-driven national projects; to avoid creating new institutions; to be transparent and accountable to contributors and beneficiaries in its governance; and to make itself available as the funding mechanism for UNCED conventions.²¹⁰ A Participants Assembly was suggested to direct meetings, with the

205. GOVERNING COUNCIL ON THE UNITED NATIONS DEVELOPMENT PROGRAMME, REPORT ON THE ORGANIZATIONAL MEETING FOR 1990, Decision 90/20, ENVIRONMENT, *supra* note 201, at 60.

206. GOVERNING COUNCIL ON THE UNITED NATIONS DEVELOPMENT PROGRAMME, REPORT ON THE ORGANIZATIONAL MEETING FOR 1990, Decision 90/22, REFUGEES, DISPLACED PERSONS AND RETURNEES, *supra* note 201 at 62-63.

207. AGENDA 21, LEGAL ASPECTS, *supra* note 200, at ¶¶ 10, 13.

208. GOVERNING COUNCIL, UNDP AND THE NEW EMERGING NEEDS OF SUSTAINABLE DEVELOPMENT, *supra* note 201, at 4.

209. Charles Barber, *Strategic Issues for the GEF*, WORLD RESOURCES INST., reprinted in GLOBAL ENVIRONMENT FACILITY, A BULLETIN ON THE GLOBAL ENVIRONMENT FACILITY, Annex III (Dec. 1992) (available from World Bank, Washington, D.C.).

210. GLOBAL ENVIRONMENTAL FACILITY, *supra* note 195, at 5.

power to give strategic guidance, set priorities, and determine country eligibility.²¹¹

However, the World Bank keeps the administrative power over individual projects within its general work plan.²¹² While the GEF goes part of the way towards establishing a partnership in governance, the World Bank maintains final control and preempts competing financial structures. It is not clear how the concession regarding eligibility will mesh with the requirements for World Bank work, which require that borrowing countries be members of the IMF and subject to the structural adjustment programs discussed above. As stated above, at UNCED, the GEF membership was agreed to be universal, in contravention of World Bank requirements.²¹³ Also, the only systematic evaluations of the GEF's work would be *ex post facto*, as the Participants Assembly would only be empowered to comment on the cost effectiveness or retrospective integrity of scientific determinations made in the course of projects.²¹⁴ There are still no provisions for a body with the authority to veto plans having a negative environmental impact.

The World Bank also reviewed the GEF's Scientific and Technical Advisory Panel (STAP), which is UNEP's contribution to the organization. STAP provides expert services to both the Participants Assembly and the implementing agencies of the GEF, again including only *ex post facto* review of specific projects.²¹⁵ This organization will also develop reciprocal representation with the experts from other conventions.²¹⁶ However, there is no assurance that this expert body will be given the opportunity and the resources to conduct assessments of all environmental impacts, or the effects of projects on human rights. Nor do available documents articulate the repercussions for those projects receiving negative reviews. In this context, the World Bank will keep control over the GEF while managing to maintain its independence from the "political" bodies of the U.N.²¹⁷

211. *Id.*

212. The Independence of this Secretariat from the World Bank's GEF Administrator, has yet to be resolved. See GEF, REPORT BY THE CHAIRMAN, *supra* note 194, at 23-24.

213. Shihata (92), *supra* note 60, at 35-36.

214. *Id.* at 6.

215. *Id.* at 32.

216. *Id.*

217. Shihata (88), *supra* note 16, at 37.

C. Criticisms of the Agenda 21 Arrangements

While the UNCED debates adopted the GEF as a model, the Facility should not by any means be seen as the only or best institution for the promotion of sustainable development. Many nations praised the GEF for linking existing international financial institutions in an efficient arrangement, thereby making the most of the comparative advantage in combining the expertise of existing organizations.²¹⁸ As the GEF has begun to diversify its focus, including small grants to support grassroots and community initiatives, the shift from industrial projects to capacity building has been a welcome sign.²¹⁹ While some nations found this to suggest the GEF as the appropriate main funding mechanism for future international environmental agreements, other countries found sufficient problems to question the GEF's future viability.

Countries' criticisms included the GEF per capita income criteria, and eligibility criteria that conflict with differentiated responsibility.²²⁰ They spoke out against the lack of regional or national organization participation, and the need for more equitable representation of less industrialized nations, NGO's, and scientific organizations.²²¹ They sought transparency in policy and project decision-making, and flexibility to evolve along with the UNCED process.²²² They objected to the lack of mandatory contributions according to responsibility for global environmental problems.²²³ Many groups attacked the limiting of the GEF's mandate to matters regarding the ozone layer, climate change, biodiversity, and oceans. They suggested that this mandate immediately be expanded to include such matters as desertification, acid rain, urban degradation, water pollution, land erosion, national capacity building, and the related matters of poverty and general debt, which contribute to overall environmental degradation.²²⁴ On the other hand, some countries, notably the U.S., requested that the World Bank be a full and active participant in changing the system of global finance.²²⁵ Critics find that the closed-door, project-oriented lending of the World Bank gives rise to a culture of international de-

218. See Institutional Proposals - II, *supra* note 177, at ¶¶ 112, 124.

219. See *id.* at ¶ 130.

220. See generally *id.* at ¶¶ 131-144.

221. See *id.*

222. See *id.* at ¶¶ 140, 142.

223. See *id.* at ¶¶ 131-132, 139.

224. See *id.* at ¶ 135; see also Pronk & Haq, *supra* note 4, at 18.

225. Institutional Proposals - II, *supra* note 177, at ¶ 129.

velopment which is flawed, and insist that an entirely different lending organization is needed.²²⁶ This type of institution would favor funding country-strategy efforts or small, localized biodiversity projects.²²⁷

Proper governance for sustainable development with respect for human rights requires transparency, a participatory decision-making process, and public accountability. NGOs have asserted that governance of financial institutions must include disclosure, documentation, consistency in other, more mainstream development activities, and independent review by a body with authority to hear petitions from affected individuals and communities.²²⁸ While Agenda 21 calls for the widest possible use of environmental impact statements, it is not clear what these statements for sustainable development projects will contain, or who will determine whether they are adequate. So far, environmentalists have found that projects in the first stage of the GEF were approved without adequate assessment guidelines or criteria, and before STAP was constituted to review GEF work.²²⁹ In addition, the approval process did not include consideration of social factors, allow for a participatory process, or include measures for accountability.²³⁰

In addition to a lack of institutional change, well-intentioned new projects may be subverted by ongoing projects. For instance, the GEF, under World Bank supervision, will provide \$2 million to help reduce greenhouse gas emissions in China, at the same time that the Bank is proposing \$480 million in loans for four coal-fired power plants, \$150 million for gas development, \$1.01 billion for transportation projects, and \$81 million for a cement plant - all reportedly without assessment of greenhouse gas emissions.²³¹ If the Sustainable Development Commission implements Agenda 21 without changing the function of all international financial institutions, UNCED will have achieved what some detractors have termed its "hidden agenda": to increase the rate of industrial development in lesser developed na-

226. See generally Barber, *supra* note 209.

227. *Id.* at 4.

228. *An NGO Proposal For the Structure and Governance of the GEF In A Post-Pilot Phase*, April 28, 1992 [hereinafter *NGO Proposal*] reprinted in, GEF, Report By The Chairman, *supra* note 194, at Annex IV.

229. GREENPEACE, RESTRUCTURING THE GLOBAL ENVIRONMENT FACILITY, PROPOSALS SUBMITTED BY GREENPEACE INTERNATIONAL TO THE GLOBAL ENVIRONMENT FACILITY PARTICIPANT'S MEETING, at 2 (1991).

230. *Id.*

231. GREENPEACE INTERNATIONAL, GLOBAL WARMING: THE SCANDALOUS RECORD OF THE WORLD BANK, at 4 (April 1992) (on file with author).

tions while diffusing public pressure to stop "top-down" policies, wasteful resource exploitation, and environmental degradation.²³² For these reasons, NGOs demanded before the conclusion of UNCED that the GEF get no new responsibilities until measures were articulated for public consultation, public access to information, and greater focus on those people affected by projects.²³³ The NGOs proposed standards for project approval by all participants in the fund, notice and comment procedures, and a separate office to ensure compliance with the procedures and standards of various conventions.²³⁴ These proposals have not been put into effect.

Of the other proposals considered at UNCED, the most fully formed was for a Green Fund, or General Fund for Promotion of Sustainable Development, proposed in the Beijing Ministerial Declaration on Environment and Development and supported by the Group of 77.²³⁵ The Green Fund would have focused on problems not already covered by international environmental agreements, such as water pollution, deforestation, soil loss, and desertification, which are issues more closely tied to greater recognition of human rights.²³⁶ Provisions of this fund would include: mandatory contributions by those responsible for environmental degradation, either through assessment by GNP or according to a polluter pays principle; transparent governance; equal voice to all participants rather than pro rata voting; grants according to the priorities of Agenda 21, not conditioned on credit; and elimination of eligibility criteria.²³⁷ More industrialized nations argued that existing organizations be made more efficient.²³⁸ But the push against new international organizations was weak. Even Malaysia, which, on sovereignty grounds, consistently rejects proposals for any new international governmental organizations, liked the idea of the Green Fund.²³⁹ However, the GEF took center

232. Patrick McCully, *Hidden Agenda at Rio*, available in ECONET, Conference en.unced.news, Topic No. 167.

233. GEF, REPORT BY THE CHAIRMAN, *supra* note 194, Main Report, ¶ 81; *NGO Proposal*, *supra* note 228, at 2.

234. GEF, REPORT BY THE CHAIRMAN, *supra* note 194, Main Report, ¶ 81; *NGO Proposal*, *supra* note 228, at 3-4.

235. INSTITUTIONAL PROPOSALS - II, *supra* note 177, ¶ 131; BEIJING MINISTERIAL DECLARATIONS, *supra* note 56.

236. BEIJING MINISTERIAL DECLARATIONS, *supra* note 56, ¶ 23. The Beijing Ministerial Conference was one of many regional preparatory conferences which focused on offering issues and potential solutions in preparation for UNCED.

237. *Id.*; INSTITUTIONAL PROPOSALS - II, *supra* note 177, ¶¶ 131-144.

238. INSTITUTIONAL PROPOSALS - I, *supra* note 175.

239. INSTITUTIONAL PROPOSALS - II, *supra* note 177, at ¶ 139.

stage largely because of its well-orchestrated trial phase and the disappointing financial support which emerged to implement Agenda 21. However, this showcase institution should not divert attention from the larger issues in integrating human and environmental rights into sustainable development.

VI. HUMAN RIGHTS LAW APPLICABLE TO ENVIRONMENTAL DEGRADATION

While the policy war rages over the formal structure of multilateral development financing, advocates have been analyzing the developing body of human rights law as it relates to the environment, and enumerating the bases for environmental due process.²⁴⁰ Means are present, and more are developing, which give people legal recourse to bring a complaint against their government for human rights abuses arising out of environmental degradation. For instance, the optional Protocol to the International Covenant on Civil and Political Rights allows individuals to petition the Human Rights Commission regarding violations of those rights recognized by the Covenant.²⁴¹ The treaties and understandings that make up human rights law, in terms of persuasive value as well as legal impact, should serve to pressure the World Bank into greater environmental efforts or establish lines of accountability.

The Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities have only recently become concerned with the environment and its effect on human rights.²⁴² Their attention is crucial due to the

240. SIERRA CLUB LEGAL DEFENSE FUND, *supra* note 126.

241. UNITED NATIONS, SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES, HUMAN RIGHTS AND THE ENVIRONMENT, PROGRESS REPORT PREPARED BY MRS. FATMA ZOHRA KSENTINI, SPECIAL RAPPORTEUR, IN ACCORDANCE WITH SUB-COMMISSION RESOLUTION 1991/24, U.N. Doc., E/CN.4/Sub.2/7 (1992), ¶¶ 98-99 [hereinafter KSENTINI (92)], *citing* Annual Report of the Human Rights Committee (A/45/40), Vol. II, Annex IX A. (communication No. 167/1984). In the Lake Lubicon case, the Committee recognized that the expropriation and destruction of lands and natural resources belonging to the Lake Lubicon Band violated their rights under Article 27 of The International Covenant On Civil And Political Rights. The Committee also declared the rights of persons, in community with others, to engage in economic and social activities that are part of the culture of the community to which they belonged. *International Covenant on Civil and Political Rights*, G.A. Res. 220 (XXI), 21 U.N. GAOR, Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171.

242. *Human Rights and the Environment*, Commission on Human Rights, Res. 1990/41, U.N. Doc. E/CN.4/1990/41 (March 6, 1990); UNITED NATIONS, HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS, NOTE PREPARED BY MRS. FATMA ZOHRA KSENTINI PURSUANT TO SUB-COMMISSION DECISION 1989/108, SUB-COMMISSION ON THE

strength and well-established nature of human rights law, and the enormous potential for synthesis between human and environmental rights.²⁴³ The Commission and the regional human rights courts have handed down decisions allowing for incrementally broader interpretations of human rights.²⁴⁴ However, given the changes needed in consultation for development projects, rights must be enforced as well as codified in order to be meaningful. As the concept of legal rights is foreign to some communities, the powerful forces of the modern state and modern economy require that correspondingly powerful modern rights be fostered in areas of rapid development.²⁴⁵ Full legal resources need to be dedicated to ensure that development under the new international regime be sustainable.²⁴⁶

The Sub-Commission, a subsidiary of the Commission on Human Rights, has begun addressing questions regarding recognition of the relationship between environmental degradation and human rights and the prospective right to the environment discussed above.²⁴⁷ The Special Rapporteur appointed to investigate the relationship between human rights and the environment will be making her report in August 1994. The Special Rapporteur's preliminary reports have focused on the bases for human rights in domestic and international law, as well as the procedural requirements that should be placed on all large development projects in order to protect the poor, indigenous peoples, and women.²⁴⁸ As human rights are accepted as a means to protect the environment, the development project planning cycle will need to adopt these standards as their own. The following discussion of human rights law follows the contours of the Special Rapporteur's findings. The work of other scholars on the same issue reflects a developing body of law which should be enforced throughout the international governmental system, and which should be part of the Sustainable Development Commission's mandate in its dealings with all nations.

PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES, U.N. Doc. E/CN.4/Sub.2/1990/12 [hereinafter Ksentini (90)].

243. Thorne, *supra* note 3, at 338.

244. *Id.*; Shutkin, *supra* note 61, at 489-90.

245. Paul, *supra* note 54, at 78.

246. *Id.* at 78-79.

247. See generally KSENTINI (90), *supra* note 242; KSENTINI (91), *supra* note 55; KSENTINI (92) *supra* note 241.

248. KSENTINI (91), *supra* note 55.

The Universal Declaration of Human Rights proclaims, "Everyone has the right to life, liberty and security of person."²⁴⁹ In many instances, the right to life is implicated in environmental degradation.²⁵⁰ When considering the petition of the Yanomani Indians of Brazil in December 1980, the Inter-American Commission on Human Rights found that there was a violation of the right to life within the context of environmental protection, but not a violation of human rights in regard to environment.²⁵¹ In some cases, the International Human Rights Committee has shown a willingness to recognize governmental abuses of human rights where the environment has become a risk to the survival of the local people.²⁵² Such international responses give legal force to the complaints of local people against harmful development. Also, such overtures have led to more bargaining power in negotiations, as lawyers for indigenous groups have been able to muster some leverage against multinational corporations.²⁵³ In countries with weak human rights and environmental controls, World Bank influence may be the only influence taken seriously.²⁵⁴

Other human rights instruments set out rights which could be asserted to stop environmental degradation, including rights to health, to a decent existence, to work and occupational safety, to an adequate standard of living, to freedom from hunger, to education, to equality and non-discrimination, to dignity, to harmonious development of person and the family, to development, and to self-determination.²⁵⁵ In its revised guidelines for the form and content of human rights reports, the U.N. Counsel on Economic, Social and Cultural Rights has requested information regarding the environment's relation to the guidelines in the Article 11 right to an adequate level of living, the Article 12 right to health, and the Article 15 right to culture.²⁵⁶ As for

249. *Universal Declaration of Human Rights*, *supra* note 67, art. 3; *International Covenant on Civil and Political Rights*, *supra* note 241, art. 6.

250. Schwartz, *supra* note 6, at 7; Shutkin, *supra* note 61, at 489.

251. KSENTINI (92), *supra* note 241, at 27, citing Case No. 7615 of March 5, 1985, in the annual report of the Inter-American Commission on Human Rights, 1984-1985 (DEA/SER.L.V/II.66).

252. Human Rights Committee, Decision Regarding Port Hope, Ontario (Oct. 27, 1982) cited in Schwartz, *supra* note 6, at 7; Lubicon Lake Band v. Canada Human Rights Committee, Communication No. 167/1984 (Mar. 26, 1990) (finding that development of natural resources threatened a tribe's Right to Culture under Article 27 of the Covenant), cited in KSENTINI (92), *supra* note 241, at 25.

253. Marc Coöper, *Oil Slick*, MOTHER JONES, Nov./Dec. 1991, at 25.

254. Hutchins, *supra* note 104, at 521.

255. KSENTINI (92), *supra* note 241, at 25.

256. SIERRA CLUB LEGAL DEFENSE FUND, *supra* note 126, at 45. This document analyzes various multilateral instruments and declarations which include provisions for envi-

environmental refugees, a draft resolution considered by the Sub-Commission this year regarding the human rights dimensions of population transfer identified several rights violated by involuntary transfer, and requested that a special rapporteur be assigned to that topic alone.²⁵⁷ More instruments exist supporting this and other related rights than are within the scope of this Note. The patchwork of environmental rights which continues to be sewn is most important for the content of those standards and the measures necessary to prevent their violation.

VII. THE RIGHT TO THE ENVIRONMENT

Many U.N. bodies are studying implementation of a right to the environment, as derived from the same human rights discussed above.²⁵⁸ The "right to the environment" was proclaimed by the 1972 U.N. Conference on the Human Environment (UNCHE), convened in Stockholm to articulate international environmental policy and "ecodevelopment."²⁵⁹ Principle 1 of the 1972 Stockholm Declaration proclaims that, "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being."²⁶⁰

Launched at a time of great enthusiasm for the environment, this conference was seen as a great step towards saving the environ-

ronmental assessment, access to information, and popular participation such as the ICCPR, the Montreal Protocol on Substances that Deplete the Ozone Layer, the ILO Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, the Protocol on Environmental Protection to the Antarctic Treaty, the World Commission on Environment and Development, the Rio Declaration and others, as well as national constitutional and statutory provisions.

257. UNITED NATIONS, SUB-COMMISSION ON THE PREVENTION OF DISCRIMINATION AND THE PROTECTION OF MINORITIES, HUMAN RIGHTS DIMENSIONS OF POPULATION TRANSFER, INCLUDING THE IMPLANTATION OF SETTLERS AND SETTLEMENTS, at 2, U.N. Doc. E/CN.4/Sub.2/1992/L.40 (identifying the right to freedom of movement, to choose one's residence and to leave and return to one's country, to be free from arbitrary interference with one's privacy, family or home, to an adequate standard of living, to life, to liberty and security of person, to freely pursue economic social and cultural development, and to dispose freely of natural wealth and resources).

258. See Thorne, *supra* note 3, at 335; KSENTINI (90), *supra* note 242, at 3-7; *Need to Ensure a Healthy Environment for the Well-Being of Individuals*, U.N. G.A. Res. 45/94, U.N. GAOR, 45th Sess., Supp. No. 49A, U.N. Doc. A/45/49 (Dec. 14, 1990).

259. REPORT OF THE U.N. CONFERENCE ON THE HUMAN ENVIRONMENT, *quoted in* Thorne, *supra* note 3, at 303. The term ecodevelopment was attributed to Maurice Strong, Secretary General of the Stockholm Conference, who later served as Secretary General of UNCED. Muldoon, *supra* note 15, at 16.

260. UNITED NATIONS, REPORT OF THE U.N. CONFERENCE ON THE HUMAN ENVIRONMENT, Principle 1, U.N. Doc. A/CONF.48/14/Rev.1 (1972).

ment.²⁶¹ Instead of declaring a direct right to the environment, however, the Stockholm Conference emphasized Western conservationist and individual interests rather than advocating widespread changes in lifestyle regarding nature, especially in the spheres of development and consumption.²⁶² In the end, this emphasis equated progress with development of raw materials.²⁶³ The Stockholm Conference also overemphasized the "sovereignty" of governments.²⁶⁴ At that time, the UNEP was formed to create standards and instruments for exercising international responsibility and enhancing life sustaining resources.²⁶⁵ Since then, governments have used the principle of sovereignty to bypass the U.N. environmental mandate, even against the rights and interests of their citizens.²⁶⁶

The right to the environment gained support through the World Commission on Environment and Development.²⁶⁷ The list of Legal Principles for Environmental Protection and Sustainable Development suggested for implementation by that Commission include the right of people to an environment adequate for their health and well-being.²⁶⁸ The right to live in a healthy environment, or one favorable to people's development, is also included in various regional human rights instruments.²⁶⁹

In 1992, the Rio Declaration divined twenty-seven basic environmental duties.²⁷⁰ It reaffirms the UNCHE declaration, at the same time that it shifts the focus to sustainable development.²⁷¹ However, the Rio Declaration merely promises that human beings will be entitled to healthy and productive lives in harmony with nature. The du-

261. Louis B. Sohn, *The Stockholm Declaration on the Human Environment*, 14 HARV. INT'L L.J. 423, 424 (1973).

262. Gray, *supra* note 196, at 311-12.

263. REPORT OF THE U.N. CONFERENCE ON THE HUMAN ENVIRONMENT, *supra* note 260, princ. 8-11.

264. Sohn, *supra* note 261, at 424, citing REPORT OF THE U.N. CONFERENCE ON THE HUMAN ENVIRONMENT, princs. 7, 17, 21, 24.

265. P.L. De Reeder, *Environmental Programmes of Intergovernmental Organizations*, UNEP 1-1 (1977).

266. *Developments in International Environmental Law*, 104 HARV. L. REV. 1484, 1553 (1991).

267. SIERRA CLUB LEGAL DEFENSE FUND, *supra* note 126, at 15; see generally OUR COMMON FUTURE, *supra* note 21.

268. OUR COMMON FUTURE, *supra* note 21, at 348.

269. *Id.* at 16-20, analyzing the American Convention of Human Rights in the Area of Economic, social, and cultural rights (San Salvador Protocol), and the African Charter on Human and Peoples' Rights, among others.

270. See generally RIO DECLARATION, *supra* note 29.

271. *Id.*

ties generally include the intergenerational responsibility to preserve the Earth through preventive actions, shared responsibility, and protection of individual rights.²⁷² Other duties include the protection of indigenous peoples, and the promotion of environmental education and awareness.²⁷³ Principles were set out for decision-making that give precedence to long-term sustainable development, require public access to environmental information as well as public participation, and require environmental assessments "for proposed activities likely to have a significant adverse impact on the environment and which are subject to a decision of a competent national authority."²⁷⁴ Principles of transnational relations include the avoidance of harm to other nations through prior notice, consultation, and cooperation regarding environmental issues and assistance in emergencies.²⁷⁵ Finally, the principles request that efforts be taken to prevent the creation of environmental refugees and that states expedite compensation for transnational environmental harm.²⁷⁶

U.N. Special Rapporteur on Human Rights and the Environment Fatma Zhora Ksentini is continuing to study these issues, and is expected to deliver her final report in 1994. She argues for greater implementation of various rights already adopted by the General Assembly and various nations of the world.²⁷⁷ She also argues for the right to the environment as a group right or a "right of solidarity", rather than an individual right, mandating a certain level of national and international responsibility.²⁷⁸ Other commentators argue that the right should be neither a human-centered one, yielding to short-term policies of economic development, nor an abstract right vesting in the environment, but should be placed on an equal level with other human rights.²⁷⁹ Therefore, some advocates have characterized the right to the environment as a due process right, seeking to enforce international norms of environmental assessments, information, popu-

272. *Id.* princ. 1, 3-5.

273. *Id.* princ. 10, 22.

274. *Id.* princ. 10, 12, 17.

275. *Id.* princ. 19, 27.

276. *Id.* princ. 13-14.

277. KSENTINI (91), *supra* note 55, at 21-24.

278. "The right to the environment cannot be reduced to the right of the individual to claim an environment of quality, nor can it be separated from the problem of development and hence from the right of individuals and peoples to sustainable development." *Id.*

279. Dinah Shelton, *Human Rights, Environmental Rights, and the Right to the Environment*, 28 STANFORD J. INT'L L. 103, 108-110 (1991).

lar participation, and a right to a remedy for infringement of these norms.²⁸⁰

Protecting the environment from unsustainable development should include the provisions recently set out in the "right to development," adopted by the General Assembly in 1986.²⁸¹ This should not be confused with the Right of Peoples and Nations to Permanent Sovereignty over their Natural Wealth and Resources, which is limited by the overall interest of the nation and the well-being of the people, and was intended as an anti-colonial declaration.²⁸² The right to development is the right of individuals, groups, and peoples to effectively participate in, contribute to, and enjoy sustainable development in an international environment in which all human rights and fundamental freedoms can be fully realized.²⁸³ Less industrialized nations see the Declaration on the Right to Development as a call for broader participation nationally and greater democracy in international organizations.²⁸⁴ Commentators suggest that more industrialized nations have interpreted the Declaration as an international model of the welfare cycle, or "capitalism moderated by redistribution of income by the state" rather than an impetus to share productive resources and technology.²⁸⁵ A product of the North-South conflict and dominance by less developed nations of the U.N. General Assembly, the Declaration strongly reaffirms the indivisibility and interdependence of all human rights.²⁸⁶ In the sustainable development context, it should be seen as an encouraging device to restructure international development insti-

280. SIERRA CLUB LEGAL DEFENSE FUND, *supra* note 126, at 45-48; KSENTINI (91), *supra* note 55, at 3; Shelton, *supra* note 279, at 117.

281. *Declaration on the Right to Development*, G.A. Res. 41/128, U.N. GAOR, 41st Sess., Supp. No. 53, at 186, U.N. Doc. A/41/53 (1986).

282. *Permanent Sovereignty Over Natural Resources*, G.A. Res. 1803, U.N. GAOR, 17th Sess., Supp. No. 17, at 15, U.N. Doc. A/5217 (1963).

283. UNITED NATIONS, COMMISSION ON HUMAN RIGHTS, GLOBAL CONSULTATION ON THE RIGHT TO DEVELOPMENT AS A HUMAN RIGHT, REPORT PREPARED BY THE SECRETARY-GENERAL PURSUANT TO COMMISSION ON HUMAN RIGHTS RESOLUTION 1989/45, at 40, U.N. Doc. E/CN.4/1990/9/Rev.1 (Sept. 26, 1990) [hereinafter GLOBAL CONSULTATION ON THE DRD].

284. Russell Barsh, *The Right to Development as a Human Right: Results of the Global Consultation*, 13 HUM. RTS. Q. 322, 327 (1991). A more militant view held by some less developed countries was that the right to development should cause intergovernmental organizations to treat development assistance as an obligation and not as charity. Haq, *From Charity to Obligation: A Third World Perspective on Concessional Resource Transfers*, 14 TEX. INT'L L.J. 389, 421-23 (1979).

285. Barsh, *supra* note 284, at 327.

286. KSENTINI (91), *supra* note 55, ¶ 32.

tutions in order to bring about greater recognition of human and environmental rights.

VIII. DERIVATIVE RIGHTS

Another expression of rights related to the environment are those that can be derived either from the more established human rights or from the right to the environment described above.²⁸⁷ These derivative rights include: the right to environmental assessment; the right to information regarding environmental impact; and the right to meaningful participation in decision-making activities which are more likely to have a substantial impact on one's environment, including corresponding remedies for the infringement of these rights.

A. Environmental Assessment

Violations of human rights through environmental devastation are indirect. Special procedures, therefore, must be designed to protect such rights, as environmental degradation can only be avoided through preventive measures.²⁸⁸ The right or duty to conduct an environmental assessment is emerging international law.²⁸⁹ Its sources are in the right to receive and impart information, and the right to education.²⁹⁰ This right should inform the activities of all international governmental organizations pursuant to UNCED.²⁹¹ The World Bank has promulgated procedures to ensure that a project's environmental consequences are taken into account, recognizing that the losses created by "development" projects can damage people and local economies as much as help them.²⁹² However, as stated above, the World Bank does not recognize the importance of involving independent organizations or affected individuals in the observation or enforcement of this right.²⁹³ As the work of the World Bank and U.N. become more coordinated, U.N. organizations should play a greater role in assuring that these standards are enforced in otherwise independent

287. Shelton, *supra* note 279, at 132.

288. KISS & SHELTON, *supra* note 68, at 25.

289. *Id.*

290. *Universal Declaration of Human Rights*, *supra* note 67, arts. 19, 26.

291. *Information for Decision-making (Agenda 21, Chapter 40)*, ¶ 40.5, U.N. Doc. A/CONF.151/PC/26 (Part IV) available in ECONET, Conference en.unced.document, lists cost effective data collection and planning for sustainable development in all sectors based on timely, reliable and useful information as an important objective.

292. See World Bank, *Operational Directive 4.00, Annex A: Environmental Assessment* 1 (June 19, 1990 version for comments).

293. See *supra* text accompanying notes 103-110.

World Bank projects, particularly those undertaken by the reconfigured GEF. Such oversight is essential in overcoming the institutional bias which leads to the problems described above in the context of the Cote d'Ivoire and Sardar Sarovar/Narmada Dam projects.

B. The Right to Information

The right to know or the right to have information represents the flip side of environmental assessments. Individuals who are to be affected by decisions and measures affecting their environment should be informed in advance.²⁹⁴ Information on certain chemicals produced by industrial plants, or the long-range effects of a given industrial project, are necessary to the polycentric decision-making made by a community.²⁹⁵ However, development projects are often classified as government secrets, so that even if there are assessments, public access is limited.²⁹⁶ In addition, information released often is not comprehensible to those most affected. At UNCED, the international community was challenged to make information relevant to sustainable development and accessible in the form and at the time required to facilitate its use.²⁹⁷ Furthermore, the importance of local, provincial national, and international capacity to collect and use data was highlighted.²⁹⁸ For this reason, it is often suggested that governments need to make special investments, or at least balance the asymmetries in the market for information, to make sure that such information is disseminated and that it is in a form which would be of use to the people affected.²⁹⁹ In order to provide usefulness as well as access, NGOs, especially local citizens' groups, indigenous or tribal representatives, and women, have a role to play in digesting this information, as well as in assisting the independent review of the adequacy of projects.³⁰⁰

294. KISS & SHELTON, *supra* note 68, at 25. This is particularly true for indigenous peoples who may need special efforts to assure that information is provided to them in a language and medium they can understand, and because they are often more susceptible to dramatic changes in their ecosystems.

295. Mary L. Lyndon, *Information Economics and Chemical Toxicity: Designing Laws to Produce and Use Data*, 87 MICH. L. REV. 1795, 1796 (1989).

296. Paul, *supra* note 54, at 81.

297. *Information for Decision-making*, *supra* note 291, ¶ 40.5.

298. *Id.*

299. Lyndon, *supra* note 295, at 1825.

300. Tort liability, such as product liability, is another means to impose a duty to protect or warn a populace. However, there is often a belief that such pressure becomes an expense for business. In the international forum, it would be difficult to assess compensatory damages for a failure to communicate, considering how quickly efforts to communicate

The flow of information must be facilitated by linking the costs of public research on environmental degradation to those private interests which profit from development, in such a way as to make pertinent information available to the worker, consumer, or neighbor.³⁰¹ U.S. law offers several models for international implementation. In the 1970s, the U.S. began implementing standards requiring employers to warn workers of hazardous chemicals, giving rise to the 1985 Occupational Safety and Health Act (OSHA) Hazard Communication Standard, requiring standardized material safety data sheets with all pertinent information about a given industrial product.³⁰² If this idea were extended into the international forum, supervision by an organization such as UNEP is needed to assure that the material safety data sheets used would be comprehensive, compatible, and accessible internationally.

Another aspect of the right to know in the U.S. is embodied in the Emergency Planning and Community Right to Know Act (EPCRA).³⁰³ Following directly on the heels of the Bhopal disaster, EPCRA required local committees to plan emergency responses to industrial accidents.³⁰⁴ Agenda 21 encourages countries to produce, standardize and document such information on a global scale.³⁰⁵ EPCRA also makes provision for a national toxics inventory, much like the international inventory compiled by UNEP.³⁰⁶ A strong international organization would be needed for meaningful enforcement of such a scheme on an international level.

However, UNEP is criticized as ineffectual. Not only are there few tough enforcement provisions, inconsistencies in funding, and vague mandates, it is also arguable that UNEP's unobtrusive and cooperative spirit invites abuse.³⁰⁷ This ineffectiveness is worsened by

become mired in cultural differences. The greatest problem with this after-the-fact remedy is that such protection of the environment comes too late for those who live in areas of the world that are most vulnerable, as was particularly true in the Bhopal incident. But in the national consumer protection field, this may be the only legal recourse, and one of the only pressures that can be brought to bear in garnering information. In the end, the promulgation of such private causes of action internationally will be the responsibility of the International Law Commission.

301. Lyndon, *supra* note 295, at 1825.

302. Occupational Health and Safety Act, 29 U.S.C. § 655(b)(7) (1985).

303. Emergency Planning and Community Right to Know Act (EPCRA) tit. III of the Superfund Amendment and Reauthorization Act of 1986, 42 U.S.C. §§ 11001-11050 (1986).

304. *Id.* § 301.

305. *Information for Decision-making*, *supra* note 291, ¶¶ 40.22-40.24.

306. EPCRA, *supra* note 303, § 312.

307. Gray, *supra* note 196, at 307-309.

the independent decision-making of other international governmental organizations like the World Bank. Some propose to give UNEP a greater mandate and enforcement authority.³⁰⁸ But the expansion of such responsibility over GEF projects should also include the resources to make sure that this oversight is meaningful. UNEP's International Register of Potentially Toxic Chemicals (IRPTC) is swamped by the 100,000 chemicals currently in use, and the 1,000 new chemicals introduced every year.³⁰⁹ Also, the Global Environment Monitoring System must be coordinated to digest environmental information despite its inadequate funding.³¹⁰ In this capacity, UNEP seems to have been relegated to the task of being a removed, impartial research group; thus ineffective in meeting the need for affirmative environmental advocacy in the international arena. Agenda 21 proposes the strengthening of UNEP's institutional capacity to integrate environment and development on an international scale.³¹¹ This mandate should extend throughout the work of the GEF, the SDC, and the World Bank.

These means of promoting the flow of information and enforcing the right to know are not excess costs imposed on industry. Rather, they are ways to correct an obvious market failure. The asymmetric market for information has left the individual without the resources to access or digest information necessary for informed decision-making.³¹² Such information is essential for sustained global development.

C. The Right to Public Participation

The right to effective participation is also necessary for long-range, sustainable development. The principle of integrated and coordinated development planning was raised in the Declaration on the Human Environment.³¹³ It may be interpreted from many other more generally recognized human rights instruments, including the International Covenant on Civil and Political Rights and the International Covenant of Economic, Social and Cultural Rights.³¹⁴ Principle 23 of

308. *Id.* at 317.

309. *Id.* at 313.

310. OUR COMMON FUTURE, *supra* note 21, at 275.

311. *Information for Decision-making*, *supra* note 291, ¶ 40.13.

312. *See generally* Lyndon, *supra* note 295, at 1796.

313. REPORT OF THE U.N. CONFERENCE ON THE HUMAN ENVIRONMENT, *supra* note 261, Principle 13.

314. *Universal Declaration of Human Rights*, *supra* note 67, art. 21 (the right to a social and international order in which other rights may be realized); *International Covenant on Civil and Political Rights*, *supra* note 242, art. 1 (the right to self determination); *Interna-*

the World Charter for Nature also demands that governments provide individuals with meaningful opportunities to participate in formulating policies of direct concern to their environment and offer means of redress when the environment has suffered damage.³¹⁵ Further organizations such as the International Labor Organization are currently rejecting assimilationist, top-down approaches in favor of creating procedures which grant powers to the people affected by environmental degradation.³¹⁶ While this may be seen as a political demand, it is a crucial part of any sustainable development project as such projects have failed repeatedly due to a lack of consultation with the people who are most affected. UNCED recognized the need to empower specific target groups such as the poor, pastoralists, landless households, women, indigenous peoples, and others deserving special representation. Decisions made regarding development should enjoy the safeguards of some form of environmental due process,³¹⁷ both in development of policy and project approval.

While the core body of human rights law has achieved a certain level of general recognition, many countries are so far from an acceptable level of implementation that these standards do not assure sustainable development. The principles derived from articulated human rights will not protect and empower the individuals most affected by international development projects unless they are ratified, or the norms become customary law. One way to accomplish this would be to enforce these standards in all international financial institutions, especially in the wake of UNCED, to assure that they do become part of international practice. Unless the international community acts decisively to solidify the relationship between human rights and the environment in all Agenda 21 organizations, the work of UNCED will be seen by future generations as nothing more than the biggest photo opportunity in history.

IX. NATIONAL EFFORTS TO ENCOURAGE WORLD BANK STRUCTURAL CHANGES

The U.S. and other countries are continuing to pressure the World Bank to adhere to principles supporting human rights and envi-

tional Covenant of Economics, Social and Cultural Rights, entered into force Jan. 3, 1976, art. 1, 993 U.N.T.S. 3 (1967) (the right to self determination).

315. Kiss & SHELTON, *supra* note 68, at 26.

316. Russel Barsh, *An Advocate's Guide to the Convention on Indigenous and Tribal Peoples*, 15 OKLA. CITY U. L. REV. 209, 210 (1990).

317. SIERRA CLUB LEGAL DEFENSE FUND, *supra* note 126, at 45.

ronmental protection.³¹⁸ Just as the World Bank purports to exercise financial accountability through conditioning its loans, countries have learned that they can exercise considerable sway through threats to withhold funds from the Bank.³¹⁹ A letter from the U.S. Senate Foreign Operations Subcommittee sets benchmarks for World Bank progress by 1993 in energy efficiency, tropical rainforest protection, environmental assessment, and resettlement of those forcibly removed.³²⁰ The Subcommittee challenged the strength of enforcement mechanisms in the Operational Directive on Involuntary Resettlement.³²¹ The letter also reasserts the U.S. International Development and Finance Act of 1989 (IDFA), which came into effect in December 1991.³²² The IDFA orders the Executive Director of the bank not to vote in favor of any action which would have a significant effect on the human environment unless an assessment analyzing the environmental impacts of the project has been made available to the board of directors of the institution and to affected groups.³²³ While the World Bank Charter does not allow Executive Directors to maintain allegiances to appointing countries, there is no legal sanction for doing so.³²⁴ In this way, environmental and human rights aspects of sustainable development have begun very real inroads on the "neutral" policies of World Bank project planning.

The power of such dissent, questionable under the World Bank Articles of Agreement, is not without precedent. On November 20, 1986, the U.S. abstained from approving a \$250 million World Bank loan to Chile due to human rights violations by the military government.³²⁵ On August 18, 1987, the U.S. Executive Director to the African Development Bank abstained on a proposed \$25 million loan for

318. For a history of U.S. pressure on Multilateral Development Banks and Bilateral Development Banks, see Muldoon, *supra* note 15, at 28-29, discussing the House Subcommittee on International Development Institutions and Finance and House Joint Resolution 465, Further Continuing Appropriations for Fiscal Year 1986, Act of Dec. 19, 1985, Pub. L. No. 99-190, 99 Stat. 1185, 130922.

319. Horberry, *supra* note 40, at 837.

320. Senate Letter, *supra* note 2, at 2-6.

321. *Id.* at 4.

322. *Id.* at 5-6, citing International Development and Finance Act (IDFA), Pub. L. No. 101-240, (1989), 22 U.S.C.S. § 262 (1991).

323. See Assessment of Environmental Impact of Proposed Multilateral Development Bank Actions, 22 U.S.C. § 262m-7 (1991). See also Human Rights and United States Assistance Policies with International Financial Institutions, 22 U.S.C. § 262(d) (1991). Some environmentalists suggest completely eliminating U.S. funding for international institutions that do not fundamentally reform their core policies. GORE, *supra* note 7, at 344.

324. Shihata (88), *supra* note 16, at 46.

325. *General Developments*, 3 BNA INT'L TRADE REP. 1472 (Dec. 3, 1986).

increased slaughterhouse capacity in Botswana.³²⁶ Environmental groups feared that increased demand for cattle would put further pressures on wildlife grazing lands.³²⁷ Earlier World Bank projects to encourage beef exports involved erecting fences which were responsible for the deaths of tens of thousands of wild animals each year.³²⁸ Likewise, in Brazil, World Bank funding for the Polonoroeste Forestry Project was suspended when NGOs publicized the fact that the project consisted of building a 900-mile road to facilitate the deforestation of an area the size of Wisconsin.³²⁹ The voting of the Executive Directors under the IDFA may further serve as the vehicle for environmental accountability at the World Bank, especially considering that other countries, such as Sweden, are considering modeling their Executive Director participation in the major development banks after the U.S. IDFA model.³³⁰ While loans for harmful projects, such as Cote d'Ivoire's forestry management continue to be approved despite U.S. abstention, the precedent has been set. Theoretically at least, a majority coalition of World Bank Executive Directors could reject a loan on the basis of environmental problems.

Not only is there pressure on the World Bank to be more concerned with the environmental impact of development projects, but national legislation like the IDFA also opens up project negotiations. The IDFA not only requires that environmental assessments be timely, but also counters World Bank secrecy provisions and requires public release of often confidential assessment documents, unless the Secretary of the Treasury finds the disclosure of such documents would jeopardize the confidential relations of the World Bank.³³¹ This type of national legislation encourages the World Bank to change its involuntary resettlement policies and allows greater access to environmental assessments.

More recently, the U.S. Senate Committee on Appropriations has concluded that forceful responses are necessary in light of World

326. *U.S. Rejects Slaughterhouse Loan to Botswana on Environmental Grounds*, 10 INT'L ENVTL. REP. 445 (1987).

327. *Id.*

328. *Id.*

329. Sen. Robert W. Kasten Jr., *Hand in Hand: Economic Development and Environmental Protection*, 18 ENVTL. L. REP. 10047, 10048 (1988); Muldoon, *supra* note 15, at 4-5. Despite warnings, the World Bank had earlier decided that it could proceed with a \$500 million financing of the \$1.6 billion project in reliance on environmental safeguards built into the loan agreement. Muldoon, *supra* note 15, at 4-5. The World Bank itself took the step of suspending its first loan for environmental reasons. Rich, *supra* note 20, at 694-96.

330. Kasten, *supra* note 329, at 10048.

331. 22 U.S.C. § 262m-7 (a)(2) (1991).

Bank failures to implement measures to meet benchmarks in energy efficiency, tropical rainforest protection, environmental assessment and resettlement of forcibly displaced populations.³³² Therefore, it is considering withholding a portion of Multilateral Development Bank appropriations for fiscal year 1994.³³³ Changes occurring with the new U.S. Administration suggest that such a move by Congress might be encouraged. Given the changes proposed to make the financial and institutional management of development more sustainable, calls for coordination of U.N. policy and World Bank finance are mounting. The World Bank Operational Directives on environmental assessment and involuntary resettlement could be improved and made more efficient by focusing on enforcement of existing and emerging human rights and environmental standards, as matters of international law.

X. CONCLUSION

A new awareness has informed development policy with the consciousness that global poverty and hunger will not end until all aspects of oppression, including human rights abuses and environmental degradation, are put to an end. There is increasing recognition that old models of economic growth, which exploited lands for raw materials, must be replaced by balanced, sustainable development, including debt restructuring, debt for nature swaps, increased locally oriented capacity building, full environmental assessments, informed consent of all affected people, and technology transfer. Individuals should be given legal recourse against development projects which threaten the integrity of their environment, especially when organized by international governmental organizations. The legal recourse against environmental or economic oppression should be just as strong as that against political oppression.

To achieve sustainable development, environmental and human rights safeguards are necessary components of multilateral development bank decision-making. Thus, finance and institutional arrangements became the key issue in the UNCED negotiations.³³⁴ However, the World Bank continues to regard itself as immune from international standard setting, and refuses to allow involvement of outside

332. Statement by the U.S. Senate Committee on Appropriations, Foreign Operations Subcommittee (1993) (on file with the author).

333. *Id.*

334. *Question of Funding Blocks Progress of UNCED Negotiations, U.S. EPA Official Says*, BNA INT'L ENVTL. DAILY, Dec. 5, 1991, available in LEXIS, Intlaw Library, Intenv File.

organizations in its own work or the work of the GEF.³³⁵ The World Bank should not remain unaffected while it enters into complex cooperative arrangements with U.N. organs. UNCED must have a broader impact on the current structure of international development finance if sustainable development is truly its goal, especially in mandating more environmental due process and human rights safeguards into current international development policy. Human rights standards, environmental rights, and environmental economics are necessary components of a balanced approach to the twenty-first century.

5065

335. *Environment: No Decisive Role For NGOs in Funding Project*, INTER PRESS SERVICE, Dec. 20, 1991, available in LEXIS, Nexis Library, IPS File.